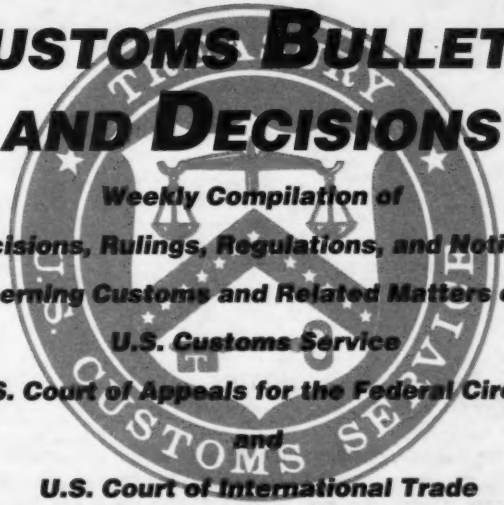
CUSTOMS BULLETIN AND DECISIONS



Weekly Compilation of

Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 29 **JUNE 21, 1995** **NO. 25**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 95–47)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR MAY 1995

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign countries shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: Monday, May 29, 1995.

China (Taiwan) renminbi yuan:

May 1, 1995	$0.039370
May 2, 1995	.039370
May 3, 1995	.039370
May 4, 1995	.039355
May 5, 1995	.039355
May 6, 1995	.039355
May 7, 1995	.039355
May 8, 1995	.039355
May 9, 1995	.039355
May 10, 1995	.039355
May 11, 1995	.037864
May 12, 1995	.039355
May 13, 1995	.039355
May 14, 1995	.039355
May 15, 1995	.039216
May 16, 1995	.039093
May 17, 1995	.039378
May 18, 1995	.038986
May 19, 1995	.038986
May 20, 1995	.038986
May 21, 1995	.038986
May 22, 1995	.038790
May 23, 1995	.038715
May 24, 1995	.038700
May 25, 1995	.038805
May 26, 1995	.039370
May 27, 1995	.039370
May 28, 1995	.039370

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for May 1995 (continued):

China (Taiwan) renminbi yuan (continued):

May 29, 1995	$0.039370
May 30, 1995	.039093
May 31, 1995	.039093

Greece drachma:

May 1, 1995	$0.004408
May 2, 1995	.004444
May 3, 1995	.004456
May 4, 1995	.004475
May 5, 1995	.004459
May 6, 1995	.004459
May 7, 1995	.004459
May 8, 1995	.004492
May 9, 1995	.004471
May 10, 1995	.004424
May 11, 1995	.004344
May 12, 1995	.004282
May 13, 1995	.004282
May 14, 1995	.004282
May 15, 1995	.004294
May 16, 1995	.004337
May 17, 1995	.004316
May 18, 1995	.004263
May 19, 1995	.004302
May 20, 1995	.004302
May 21, 1995	.004302
May 22, 1995	.004303
May 23, 1995	.004268
May 24, 1995	.004286
May 25, 1995	.004398
May 26, 1995	.004458
May 27, 1995	.004458
May 28, 1995	.004458
May 29, 1995	.004458
May 30, 1995	.004435
May 31, 1995	.004410

South Korea won:

May 1, 1995	$0.001308
May 2, 1995	.001308
May 3, 1995	.001307
May 4, 1995	.001307
May 5, 1995	.001307
May 6, 1995	.001307
May 7, 1995	.001307
May 8, 1995	.001306
May 9, 1995	.001310
May 10, 1995	.001311
May 11, 1995	.001310
May 12, 1995	.001309
May 13, 1995	.001309
May 14, 1995	.001309
May 15, 1995	.001305
May 16, 1995	.001305
May 17, 1995	.001306
May 18, 1995	.001307

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for May 1995 (continued):

South Korea won (continued):

May 19, 1995	$0.001308
May 20, 1995	.001308
May 21, 1995	.001308
May 22, 1995	.001309
May 23, 1995	.001308
May 24, 1995	.001308
May 25, 1995	.001310
May 26, 1995	.001310
May 27, 1995	.001310
May 28, 1995	.001310
May 29, 1995	.001310
May 30, 1995	.001310
May 31, 1995	.001310

Dated: June 5, 1995.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 95–48)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR MAY 1995

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 95–26 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Holiday: Monday, May 29, 1995.

Austria schilling:

May 12, 1995	$0.098299
May 13, 1995	.098299
May 14, 1995	.098299
May 15, 1995	.098447
May 18, 1995	.097595
May 23, 1995	.098314

Belgium franc:

May 12, 1995	$0.033636
May 13, 1995	.033636
May 14, 1995	.033636
May 15, 1995	.033647
May 18, 1995	.033356
May 23, 1995	.033602

FOREIGN CURRENCIES—Variances from quarterly rates for May 1995 (continued):

France franc:

May 12, 1995	$0.197550
May 13, 1995	.197550
May 14, 1995	.197550
May 15, 1995	.197589
May 17, 1995	.195752
May 18, 1995	.193498
May 19, 1995	.195848
May 20, 1995	.195848
May 21, 1995	.195848
May 22, 1995	.195848
May 23, 1995	.194780
May 24, 1995	.195695

Germany deutsche mark:

May 12, 1995	$0.691324
May 13, 1995	.691324
May 14, 1995	.691324
May 15, 1995	.692281
May 18, 1995	.686342
May 23, 1995	.691324

Italy lira:

May 5, 1995	$0.000611
May 6, 1995	.000611
May 7, 1995	.000611
May 8, 1995	.000616
May 9, 1995	.000615
May 10, 1995	.000615
May 25, 1995	.000609
May 26, 1995	.000610
May 27, 1995	.000610
May 28, 1995	.000610
May 29, 1995	.000610
May 30, 1995	.000614

Mexico peso:

May 1, 1995	$0.168350
May 2, 1995	.167785
May 3, 1995	.171527
May 4, 1995	.169205
May 5, 1995	.176367
May 6, 1995	.176367
May 7, 1995	.176367
May 8, 1995	.170068
May 9, 1995	.170648
May 10, 1995	.167504
May 11, 1995	.168634
May 12, 1995	.168067
May 13, 1995	.168067
May 14, 1995	.168067
May 15, 1995	.167504
May 16, 1995	.168067
May 17, 1995	.168350
May 18, 1995	.168350
May 19, 1995	.168919
May 20, 1995	.168919

FOREIGN CURRENCIES—Variances from quarterly rates for May 1995 (continued):

Mexico peso (continued):

May 21, 1995	$0.168919
May 22, 1995	.168919
May 23, 1995	.166945
May 24, 1995	.165017
May 25, 1995	.163934
May 26, 1995	.162075
May 27, 1995	.162075
May 28, 1995	.162075
May 29, 1995	.162075
May 30, 1995	.161031
May 31, 1995	.162338

Netherlands guilder:

May 12, 1995	$0.617170
May 13, 1995	.617170
May 14, 1995	.617170
May 15, 1995	.618085
May 18, 1995	.613196
May 23, 1995	.617703

Portugal escudo:

May 18, 1995	$0.006531

Spain peseta:

May 9, 1995	$0.008328
May 26, 1995	.008341
May 27, 1995	.008341
May 28, 1995	.008341
May 29, 1995	.008341

Switzerland franc:

May 11, 1995	$0.840336
May 12, 1995	.829876
May 13, 1995	.829876
May 14, 1995	.829876
May 15, 1995	.827472
May 16, 1995	.834376
May 17, 1995	.832986
May 18, 1995	.821018
May 19, 1995	.832639
May 20, 1995	.832639
May 21, 1995	.832639
May 22, 1995	.834028
May 23, 1995	.830220
May 24, 1995	.833333

Dated: June 5, 1995.

FRANK CANTONE,
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 6–1995)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of May 1995 follow. The last notice was published in the CUSTOMS BULLETIN on May 24, 1995.

Corrections or information to update files may be sent to:

U.S. Customs Service
IPR Branch
1301 Constitution Avenue NW (Franklin Court)
Washington, DC 20229

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Chief, Intellectual Property Rights Branch, (202) 482–6960.

Dated: June 7, 1995.

JOHN F. ATWOOD,
Chief,
Intellectual Property Rights Branch.

The list of recordations follows:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP9500085	19950515	20150515	JAGGED EDGE	MAYATEX, INC.	N
COP9500086	19950515	20150515	RIO CONCHO	MAYATEX, INC.	N
COP9500087	19950515	20150515	THE PATRIOT	MAYATEX, INC.	N
COP9500088	19950515	20150515	SAN JUAN	MAYATEX, INC.	N
COP9500089	19950515	20150515	BORDER DIAMONDS	MAYATEX, INC.	N
COP9500090	19950515	20150515	STYLE# FSCI850 CAST IRON UMBRELLA BASE	VISTA CORPORATION	N
COP9500091	19950515	20150515	PET BIRD--FLYING HAWK	MAJOR IMPORT INCORPORATED	N
COP9500092	19950517	20150517	STATUE OF VIOLIN FOR USE WITH A TELPHONE	RONSONIC TRADING CORP.	N
COP9500093	19950517	20150517	KITCHEN BASICS BOX	TIENSHAN, INC.	N
COP9500094	19950518	20150518	ALTERNATIVES	CONGOLEUM CORPORATION	N
COP9500095	19950518	20150518	FLAGSTONE	CONGOLEUM CORPORATION	N
COP9500096	19950518	20150518	COTILLION	CONGOLEUM CORPORATION	N
COP9500097	19950518	20150518	CHOICES	CONGOLEUM CORPORATION	N
COP9500098	19950518	20150518	GRANDE MOSAIC	CONGOLEUM CORPORATION	N
COP9500099	19950518	20150518	MARBLESQUE	CONGOLEUM CORPORATION	N
COP9500100	19950518	20150518	PAVILLION	CONGOLEUM CORPORATION	N
COP9500101	19950518	20150518	PORTOFINO	CONGOLEUM CORPORATION	N
COP9500102	19950518	20150518	PARK TERRACE	CONGOLEUM CORPORATION	N
COP9500103	19950519	20150519	WINGS FOR MEN	GIORGIO BEVERLY HILLS INC.	N
COP9500104	19950519	20150519	WINGS	GIORGIO BEVERLY HILLS INC.	N
COP9500105	19950530	20150530	CRYSTAL SHELL & SEA SPARKLE	LEWIS GALOOB TOYS, INC.	N
COP9500106	19950530	20150530	MOON SHIMMER	LEWIS GALOOB TOYS, INC.	N
COP9500107	19950530	20150530	IVY ROSE & CRYSTAL BLOSSOM	LEWIS GALOOB TOYS, INC.	N
COP9500108	19950530	20150530	STAR DAZZLE & MOON DANCE STAR DAZZLE & MOON DANCE	LEWIS GALOOB TOYS, INC.	N
COP9500109	19950530	20150530	APRIL	LEWIS GALOOB TOYS, INC.	N
COP9500110	19950530	20150530	CAMILLE	LEWIS GALOOB TOYS, INC.	N
COP9500111	19950530	20150530	SUNNY	LEWIS GALOOB TOYS, INC.	N
COP9500112	19950530	20150530	LACEY	LEWIS GALOOB TOYS, INC.	N
COP9500113	19950530	20150530	APRIL BLOSSOM	LEWIS GALOOB TOYS, INC.	N
COP9500114	19950530	20150530	CRYSTAL ROSE	LEWIS GALOOB TOYS, INC.	N
COP9500115	19950530	20150530	SEA CRYSTAL	LEWIS GALOOB TOYS, INC.	N
COP9500116	19950530	20150530	SEA STAR	LEWIS GALOOB TOYS, INC.	N
COP9500117	19950530	20150530	STAR SHIMMER	LEWIS GALOOB TOYS, INC.	N
COP9500118	19950530	20150530	CRYSTABELLE	LEWIS GALOOB TOYS, INC.	N
COP9500119	19950530	20150530	JAD	LEWIS GALOOB TOYS, INC.	N
COP9500120	19950530	20150530	PRIMROSE	LEWIS GALOOB TOYS, INC.	N
COP9500121	19950530	20150530	STARBURST	LEWIS GALOOB TOYS, INC.	N
COP9500122	19950530	20150530	STARBURST	LEWIS GALOOB TOYS, INC.	N
SUBTOTAL RECORDATION TYPE			38		
TMK9500265	19950501	20031207	MAPEXPERT	DELORME PUBLISHING COMPANY INC.	N
TMK9500266	19950501	20030207	STREET ATLAS USA	DELORME PUBLISHING COMPANY INC.	N
TMK9500267	19950515	20050117	ZWIERCIADLO	LOWELL INTERNATIONAL	N
TMK9500268	19950515	20050117	NIE AND DESIGN	LOWELL INTERNATIONAL	N
TMK9500269	19950515	20010619	DO-RAY	TRUCK-LITE INC.	Y
TMK9500270	19950515	20140507	TIC TAC	FERRERO S.P.A.	N
TMK9500271	19950515	20060415	TIC TAC THE 1 1/2 CALORIE BREATH MINT AND DESIGN	FERRERO S.P.A.	N
TMK9500272	19950515	20050618	TIC TAC AND DESIGN	FERRERO S.P.A.	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK9500273	19950515	19970830	MON CHERI AND RIBBON DESIGN	FERRERO S.P.A.	N
TMK9500274	19950517	20031214	ESCAPE	CALVIN KLEIN COSMETIC CORPORATIO	N
TMK9500275	19950517	20090530	TRISH MCEVOY	TRISH MCEVOY, LTD.	Y
TMK9500276	19950517	20000612	PROTECTIVE SHIELD	TRISH MCEVOY, LTD.	Y
TMK9500277	19950517	20040615	CATALINA AND DESIGN	AUTHENTIC FITNESS RETAIL INC.	N
TMK9500278	19950517	20041214	WHITE STAG AND DESIGN	AUTHENTIC FITNESS RETAIL INC.	N
TMK9500279	19950517	20030517	RED LANTERN AND DESIGN	HUNAN PROVINCIAL FIRECRACKERS	N
TMK9500280	19950517	20020420	SEA GULL AND DESIGN	SHANDONG ANIMAL BY-PRODUCTS	N
TMK9500281	19950517	20041115	DESIGN OF A HOCKEY STICK BLADE	MYLEC,INC.	N
TMK9500282	19950517	20041119	SIGMA AND DESIGN	TBC CORPORATION	N
TMK9500283	19950517	20041220	STRENGTH THE ULTIMATE LEG TRAINING SYSTEM AND DESIGN	STRENGTH FOOTWEAR INC.	Y
TMK9500284	19950517	20040215	STRENGTH AND DESIGN	STRENGTH FOOTWEAR INC.	Y
TMK9500285	19950517	20080119	STRENGTH	STRENGTH FOOTWEAR INC.	Y
TMK9500286	19950517	20041122	BOY	BLUS CORPORATION	Y
TMK9500287	19950517	20021229	BOY LONDON	BLUS CORPORATION	Y
TMK9500288	19950517	20050321	SUNAL AND DESIGN	SUNAL ENTERPRISES, INC.	N
TMK9500289	19950517	20050314	SUNAL	SUNAL ENTERPRISES, INC.	N
TMK9500290	19950517	19971101	TRANQIL-EASE	RAFFEL PRODUCT DEVELOPMENT CO.	N
TMK9500291	19950517	20090328	DRUMMER BOY COLLECTION	MOHAMMED SAID KOTOB	Y
TMK9500292	19950518	20040531	MICRO X	WAVE SPORTS, INC.	N
TMK9500293	19950518	20011010	LLAMA	SGS IMPORTERS INTERNATIONAL INC.	Y
TMK9500294	19950518	20010115	BELVEDERE	TONY MARTERIE & ASSOCIATES	Y
TMK9500295	19950519	20011029	ART	MOLECULAR BIO-PRODUCTS SERVICE	N
TMK9500296	19950519	20041129	AMERICA'S SPORT TEAM AND DESIGN	H.H. CUTLER COMPANY	N
TMK9500297	19950519	20040510	CUTLER SPORTS APPAREL	H.H. CUTLER COMPANY	N
TMK9500298	19950519	20050131	P.J. JUNCTION	H.H. CUTLER COMPANY	N
TMK9500299	19950519	20031026	CSA	H.H. CUTLER COMPANY	N
TMK9500300	19950519	20041227	LEAGUE LEADER	H.H. CUTLER COMPANY	N
SUBTOTAL RECORDATION TYPE		36			
TNM9500001	19950517	99999999	CALIFORNIA HIPERMART	CALIFORNIA HIPERMART	N
TNM9500002	19950518	99999999	CHENGCORP	CHENGCORP	N
TNM9500003	19950519	99999999	WEIGHPACK, INTERNATIONAL, B.V.	WEIGHPACK INTERNATIONAL B.V.	N
SUBTOTAL RECORDATION TYPE		3			
TOTAL RECORDATIONS ADDED THIS MONTH		77			

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, June 6, 1995.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

MODIFICATION OF RULING LETTER RELATING TO CLASSIFICATION OF GREENHOUSE SCREEN MATERIAL (SCREENING)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling pertaining to the tariff classification of certain greenhouse screen material (hereafter greenhouse screening). Notice of the proposed modification was published April 26, 1995, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This decision is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Textile Classification Branch, (202–482–7050).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On April 26, 1995, Customs published a notice in the CUSTOMS BULLETIN, Volume 29, Number 17, proposing to modify Headquarters Ruling Letter (HRL) 083975 of April 11, 1990. HRL 083975 classified certain greenhouse screening as backed aluminum foil in heading 7607, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Classification of the screening was based upon application of General Rule of Interpretation 3, HTSUSA. Upon review, Customs believes that

we erred in identifying the competing headings which equally merit consideration for classification of the screening. The analysis in the modification letter, HRL 088546, explains our view on the matter.

Six comments were received in response to the notice of the proposed modification. In order to respond to substantive comments, HRL 088546 differs slightly from its initial proposed version. One change of note is in identifying the item at issue. Customs has realized that the proper term to describe the item is "screening", not screen material, and thus that change in terminology has been made. Although additional arguments have been addressed, Customs' basic premise for the modification of HRL 083975 remains the same.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying HRL 083975 to reflect proper classification of the greenhouse screening in the provision for other articles of aluminum, heading 7616. HRL 088546 modifying HRL 083975 is set forth as an attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: June 5, 1995.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, June 5, 1995.

CLA–2 R:C:T 088546 CMR
Category: Classification
Tariff No. 7616.90.5080

LOUIS SCHNEIDER
FREEMAN, WASSERMAN & SCHNEIDER
90 John Street
New York, NY 10038

Re: Modification of Headquarters Ruling Letter (HRL) 083975; greenhouse screening; article of aluminum.

DEAR MR. SCHNEIDER:

Customs has reviewed HRL 083975 of April 11, 1990, and we believe it is necessary to modify part of our decision in that ruling. Customs issued HRL 083975 to your firm in response to your request on behalf of AB Ludvig Svensson, for reconsideration of New York

Ruling Letter (NYRL) 832733 of November 21, 1988. Arguments raised in your submission of April 1, 1993, April 18, 1994 and May 25, 1995, have been considered in making this decision.

The merchandise at issue was referred to in NYRL B32733 and HRL 083975 as greenhouse screen material. It is more properly identified as screening in its condition as imported.

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of HRL 083975 was published April 26, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 17.

Facts:

NYRL 832733 classified certain greenhouse screening as other articles of aluminum in subheading 7616.90.0080, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), for those items containing aluminum foil in its material; or, as warp knit fabrics in subheading 6002.43.0090, HTSUSA, for those items that did not contain aluminum foil.

HRL 083975 reconsidered the classification of two types of screening classified in NYRL, 832733. The screening is constructed of 100 percent man-made fiber warp knit fabric with strips inserted into the fabric. One type, comprised of polyester or polyethylene strips 5 mm or less in width, was classified in subheading 6002.43.0080, HTSUSA, which provides for warp knit fabric of man-made fiber. That part of HRL 083975 remains valid and unchanged. The screening we are concerned with here is the second type consisting of polyester or polyethylene strips 5 mm or less in width and backed aluminum foil strips 5mm or less in width. This screening was classified in subheading 7607.20.5000, HTSUSA, as articles of backed aluminum foil. It is this classification which Customs believes to be in error.

That portion of HRL 083975 regarding the classification of the screening as a "material" and not a "part", thus eliminating consideration of classification in heading 8436, which provides for, among other things, other agricultural, horticultural machinery and parts thereof, remains valid and unchanged. However, Customs will address your additional arguments on this point.

Issue:

Is the greenhouse screening consisting of polyester or polyethylene strips 5 mm or less in width and backed aluminum foil strips 5 mm or less In width properly classified as knit fabric in heading 6002, HTSUSA, as other articles of aluminum in heading 7616, HTSUSA, or as aluminum foil in heading 7607, HTSUSA?

Are the aluminum foil strips in the greenhouse screening backed aluminum strips or metalized textile strips?

Did Customs err in rejecting classification of the subject greenhouse screening in heading 8436, HTSUSA, as parts of agricultural equipment?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of interpretation (GRIs). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order]."

In HRL 083975, Customs acknowledged that the greenhouse screening consisting of knit fabric and backed aluminum foil is a composite good. However, Customs erred in stating that the screening contained plaiting material; it does not. The polyester or polyethylene strips measure 5 mm or less in width and thus are considered textile strip materials of heading 5404, HTSUSA. As such, they are not within the definition of plaiting materials set forth in Note 1, Chapter 46, HTSUSA, which excludes strips and the like of chapter 54. The aluminum strips contained in the screening also fail to fall within the definition of plaiting material provided in Note 1, Chapter 46, HTSUSA.

Therefore, the issue is whether the classification of the screening is determined by the knit fabric or the aluminum foil strips. Before addressing this issue, Customs must first determine If the aluminum foil strips are backed aluminum or metalized textile strip. if the aluminum strips are textile, then the classification becomes much simpler as all the components would be textile.

Strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal is classified in heading 5605, HTSUSA. The Explanatory Notes (ENs) to the *Harmonized Commodity Description and Coding system*, the official interpretation of the Harmonized Tariff Schedule at the international level, offers the following information regarding heading 5605 at pages 777 and 778.

> (1) Yarn consisting of any textile material (including monofilament, strip and the like and paper yarn) combined with metal thread or strip, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present. The gimped yarns are obtained by wrapping metal thread or strip spirally round the textile core which does not twist with the metal. Precious metals or plated metals are frequently used.
>
> (2) Yarn of any textile material (including monofilament, strip and the like, and paper yarn) covered with metal by any other process. This category includes yarn covered with metal by electrodeposition, or by giving it a coating of adhesive (e.g., gelatin) and then sprinkling it with metal powder (e.g., aluminium or bronze).
>
> The heading also covers products consisting of a core of metal foil (generally of aluminium), or of a core of plastic film coated with metal dust, sandwiched by means of an adhesive between two layers of plastic film.
>
> * * * * * * *
>
> The heading does not include:
>
> * * * * * * *
>
> (d) Wire or strip of gold, silver, copper, aluminium or other metals (Sections XIV and XV).

Heading 7607, HTSUSA, provides for: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm. EN 76.07 states that the "heading covers the products defined in chapter Note 1(d), when of a thickness not exceeding 0.2 mm" and the "provisions of the Explanatory Note to heading 74.10 relating to copper foil apply, *mutatis mutandis*, to this heading."

Note 1(d), Chapter 76, defines plates, sheets, strip and foil, in relevant part, as:

> Flat-surfaced products * * *, coiled or not, of solid rectangular (other than square) cross-section with or without rounded corners * * * of a uniform thickness, which are:
>
> —of rectangular (including square) shape with a thickness not exceeding one-tenth of the width,
>
> * * * * * * *

The EN 74.10, at page 1048, provides in part:

> Foil classified in this heading is obtained by rolling, hammering or electrolysis. It is in very thin sheets * * *. * * * Other foil, such as that used for making fancy goods, is often backed with papers, paperboard, plastics or similar backing materials, either for convenience of handling or transport, or in order to facilitate subsequent treatment, etc. Foil remains in the heading whether or not it has been embossed, cut to shape (rectangular or otherwise), perforated, coated (gilded, silvered, varnished, etc.), or printed.

Having reviewed the pertinent ENs for beading 5605 and heading 7607, Customs agrees that the subject aluminum strips are not textile metalized yarn. The aluminum foil strips are not sandwiched between two layers of plastic film as described in EN 56.05. Instead, it appears the plastic coating serves as a backing for convenience of handling as described in EN 76.07. Therefore, we agree with your position taken in your submission of April 18, 1994, that the aluminum foil strips are not textile metalized yarn, but are backed aluminum strips of heading 7607.

The greenhouse screening at issue is a composite good of backed aluminum strips and knit fabric of man-made fibers. As a composite good, its classification is determined by application of GRI 3. In HRL 083975, Customs took the position that as a composite good, the headings under consideration were heading 6002, which provides for knit textile fabric; heading 4601, which provides for plaits and similar products of plaiting material; and heading 7607, which provides for aluminum foil. More specifically, the subheadings which were examined were subheading 6002.43.00, HTSUSA, which provides for other warp knit fabrics of man-made fibers; subheading 4601.99.00, HTSUSA, which provides for plaits and similar products of plaiting material; and subheading 7607.20.50, which provides for aluminum foil of a thickness not exceeding 0.2 mm.

Customs erred in identifying the headings which equally merit consideration for classification of the subject screen material. As explained above, the screening at issue does not contain plaiting material, thus heading 4601, HTSUSA, is not a heading which deserves consideration. In addition, subheading 7606.20.50, HTSUSA, was mistakenly identified as providing for "other articles of backed aluminum foil" when in fact the heading 7607, provides for aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm. As the heading 7607 does not provide for articles of aluminum, the subheading cannot provide for such articles. It is our view that the proper headings to consider for classification of the composite good (screening) are heading 6002, HTSUSA, which provides for knit textile fabric and heading 7616, HTSUSA, which provides for other articles of aluminum.

You have submitted arguments that classification of the subject screening in subheading 7607.20.50, HTSUSA, in HRL 083975 was correct based upon your interpretation of the proper application of the GRIS. We disagree that the essential character is imparted by the backed aluminum strips and adhere to our position taken in HRL 083975 that no one component imparts the essential character of the good and that classification turns on application of GRI 3(c), i.e., classification is determined by that heading which appears last in the tariff from among the headings which equally merit consideration.

In your submission of April 1, 1993, you argue that assuming Customs conclusion that none of the components of the good impart its essential character is correct, then application of GRI 3(c) is proper. Applying GRI 3(c), you conclude that the screening is classified in heading 7607, HTSUSA, as backed aluminum as that heading appears last in the tariff schedule and heading 7607, HTSUSA, describes the backed aluminum strip component of the screening.

The issue on which we clearly disagree, i.e., which heading, 7607 or 7616, is appropriate for consideration in the classification of the screening, can only be settled by a careful reading of GRI 2 and reference to the EN regarding the rule.

GRI 2 states, in relevant part:

> (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3. [bold added.]

The EN for GRI 2(b) states, in part:

> (X) Rule 2(b) concerns mixtures and combinations of materials or substances, and goods consisting of two or more materials or substances. The headings to which it refers are headings in which there is a reference to a material or substance (e.g., heading 05.03—horsehair), and headings in which there is a reference to goods of a given material or substance (e.g., heading 45.03—articles of natural cork). It will be noted that the Rule applies only if the headings or the Section or Chapter Notes do not otherwise require (e.g., heading 15.03—lard oil, **not * * * mixed**).
>
> * * * * * * *
>
> (XII) It does not, however, widen the heading so as to cover goods which cannot be regarded, as required under Rule 1, as answering the description in the heading; this occurs where the addition of another material or substance deprives the goods of the character of goods of the kind mentioned in the heading.

GRI 3 states:

> When by application of Rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) **The heading which provides the most specific description shall be preferred to headings providing a more general description.** However, when two or more headings each refer to part only of the materials or substances contained in * * * composite goods * * *, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. [bold added.]
>
> (b) * * * [C]omposite goods consisting of different Materials or made up of different components * * * which cannot be classified by reference to 3(a), shall be classified **as if they consisted of the material or component which gives them their essential character,** insofar as this criterion is applicable. [bold added.]

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Reading carefully the language of CRI 2(b) and GRI 3 with their accompanying ENs, in this case, Customs believes that in identifying the headings which equally merit consideration, we must identify the headings within which a "good" might fall, not simply the headings within which the materials with which it is made might fall. Thus, for example, an article consisting of aluminum wire and textile fabric (provided it meets the definition of "made up" in Note 7. Section XI) would be classifiable as either an other article of aluminum in heading 7616 or an other made up article of textile in heading 6307. Such an article would not be classifiable as textile fabric or aluminum wire although they are the components from which it is made because it would be more than the individual components from which it is made; it would be an article of these components. See, HRL 953138 of March 18, 1993 in which flexible, metallic mirrors were classified as other articles of aluminum in heading 7616, HTSUSA. In rejecting classification of the-mirrors under heading 7606, HTSUSA, which provides for aluminum plates, sheets and strips, of a thickness exceeding 0.2 mm, Customs noted "the entire product is not an aluminum sheet, but an article made from aluminum sheets." Similarly, the screening at issue is not aluminum foil, but a good made from aluminum foil and man-made fiber knit fabric.

In applying GRI 2(b) and noting the applicable EN, Customs views the screening at issue as a "good" produced by the assembly of materials and not as a "material" consisting of a mixture or combination of other materials or substances. We do not believe this position conflicts with our view that the greenhouse screening is "material" and not a "part" and thus cannot be classified as a part under heading 8436, HTSUSA. It is our belief that the screening has been processed to the point of being recognizable as a commercial "good", i.e., screening, and yet, it is not sufficiently processed to be identifiable as individual "parts". (See discussion below regarding heading 8436, HTSUS.)

Heading 7607 provides for "aluminum foil (whether or not printed, or backed with paper, paperboard, plastic or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm. Heading 7616 provides for "other articles of aluminum." While heading 7607 describes the backed aluminum strips which are part of the screening, the heading is not so broad as to encompass articles of backed aluminum foil. Customs views the screening as a "good" and that to consider classification of the screening in heading 7607 which merely describes a material which is part of the "good" would be contrary to EN XII for GRI 2(b) in that it would widen the coverage of the heading. As heading 7607 does not describe the "good" at issue, *i.e.*, screening, it cannot be considered as a heading which equally merits consideration for classification of the item. The remaining heading which does encompass the screening in the language of its heading is heading 7616 which provides for "other articles of aluminum."

Support for Customs position may be found in the General ENs for Chapter 76 where it is stated at page 1063:

The Chapter covers:

* * * * * * *

(C) Products generally obtained by rolling, extruding, drawing or forging the unwrought aluminium of heading 76.01 (headings 76.04 to 76.07).

(D) Various articles specified in headings 76.08 to 76.15, and other articles of the residual heading 76.16 which covers all other aluminium articles other than those included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature.

The screening as a finished product is not the result of any of the processes named in (C) above. It is the product of a knitting and assembly process. In addition, EN 76.16, at page 1070, indicates that the heading includes, "in particular," cloth, grill and netting of aluminum wire and expanded metal. EN 76.16 directs us to look to the EN to heading 7314 for further information regarding these particular items which are clearly intended for classification within heading 7616.

Heading 7314 provides for cloth (including endless bands), grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel. The EN for heading 7314 provides the following information:

The products of this group are, in the main, produced by interlacing, interweaving, netting, etc., iron or steel wire by hand or machine. The methods of manufacture

broadly resemble those used in the textile industry (for simple warp and waft fabrics, knitted or crocheted fabrics, etc.).

* * * * * * *

The term "wire" means hot-or cold-formed products of any cross-sectional shape, of which no cross-sectional dimension exceeds 16 mm, such as rolled wire, wire rod and flat strip cut from sheet (see Note 2 to this Chapter).

* * * * * * *

The material may be in rolls, in endless bands (e.g., for belting) or in sheets, whether or not cut to shape; it may be of two or more ply.

[Emphasis added.]

We believe that the pertinent ENs show an intent on the part of the drafters of the Harmonized System to classify aluminum cloth in heading 7616. Thus, a cloth or fabric of composite materials which include an aluminum component where classification is determined by that aluminum component, such as the screening at issue, is properly classified in heading 7616 as an other article of aluminum.

For all the reasons stated above, Customs believes that heading 7616, other articles of aluminum, is the proper heading of Chapter 76 to be considered with heading 6002, other knit fabric, in determining classification of the screening by application of GRI 3(c). Applying GRI 3(c), the greenhouse screening at issue is properly classified in heading 7616.

It has been suggested that heading 7607 includes numerous articles of aluminum foil, including aluminum can stock and etched capacitor foil at the eight and ten digit level subheadings. As to this argument, Customs points out that classification under the tariff is hierarchical starting at the four digit international level and working down to the United States statistical level. If an item does not meet the terms of the four digit heading, it is not classifiable within that heading regardless that it may be specifically provided for at the six, eight or ten digit subheadings. It is our view that the screening at issue does not fall within the four digit heading description of heading 7607 and therefore, the fact it may be analogous to an item provided for within the subheadings at the statistical level of heading 7607 is irrelevant.

ADDITIONAL ARGUMENTS FOR CLASSIFICATION UNDER HEADING 8436, HTSUSA, AS PARTS OF AGRICULTURAL MACHINERY

As stated at the beginning of this ruling letter, Customs adheres to that portion of HRL 083975 addressing the issue of classification under heading 8436, HTSUSA. We do not believe we erred in rejecting that classification based on our view that the greenhouse screening is "material" and not a "part" and thus cannot be classified as a part under heading 8436, HTSUSA.

In your submission of April 1, 1993, you made additional arguments for classification of the goods at issue under heading 8436, HTSUSA. Specifically, you cited Customs rulings issued subsequent to HRL 083975 as support for your position that the screening may be a "part". Customs rejected consideration of the screening as a "part" on the basis that the material is not processed to the point where individual articles are identifiable with certainty. The screening is not cut to specific lengths or marked for cutting. Thus, imported in material lengths, each roll of screening contains an undeterminable number of screens which cannot be individually Identified.

In HRL 083325 of May 1, 1989, Customs issued a ruling on the classification of four types of steel plates. One of these types was cut to standard width, was longer than required for actual use, was not marked to indicate its exact length (for cutting purposes), and required grinding, polishing and cutting after importation but prior to use. This fourth type of plate was about three inches longer than required for use. Customs held that all four types of plates were classifiable as parts of machinery in Chapter 84, HTSUSA. You submit that this ruling is contradictory to HRL 083975. We disagree.

The ENs for Section XVI, of which Chapter 84 is part, state in regard to machinery parts, at page 1132: "Machinery parts remain classified in the section whether or not finished ready for use." The EN indicates that a machinery part need not be "finished ready for use" to be classified as a part. But as stated in HRL 083975, an individual article must be identifiable with certainty. There is no doubt that the individual steel plate at issue in HRL 083325 was identifiable with certainty as one steel plate.

As to the companion case on the steel plates that you refer to, HRL 083371 of April 25, 1990, that ruling addressed the classification of the steel plates under the previous tariff, The Tariff Schedules of the United States. While decisions under previous tariffs may be

informative and helpful, they are not controlling in regard to classification under the HTSUSA. HRL 083325 addressed the classification of these steel plates under the HTSUSA and Customs has addressed the distinction between that case and the screening at issue herein.

HRL 951565 of April 23, 1992, is cited by you in support of your argument that the screening is classifiable as a part. That ruling dealt with the classification of flat steel wire which was notched, and wire which was notched and holed, and which Customs classified as parts of windshield wipers. You state Customs classified the wire as a part because it had only a single use and was not susceptible of being made into other articles. We would point out that not only was the wire dedicated to use, but its identity was fixed with certainty, i.e., it required no further processing upon importation, not even cutting to length.

In addition to the rulings discussed above, you cited three court cases for support of your position. We believe those cases are distinguishable from the case at hand. In the first case, *E.M. Chemicals v. United States*, 920 F. 2d 910 (Fed. Cir. 1990), the goods at issue were certain liquid crystals used in liquid crystal displays. Due to the nature of the product as a liquid, we do not believe this case is on point as to whether the need to cut the screening to length should or should not preclude it from classification as a part of agricultural equipment.

As to the other two cases which you cite, *Heraeus-Amersil v. United States*, 640 F. Supp. 1331, 10 CIT 258 (1986), and *Doherty-Burrows of Texas v. United States*, 3 CIT 228 (1982), we believe they are distinguishable on the facts and by reference to *Coraggio Design Inc. v. United States*, 12 CIT 143 (1988). In all three cases, the courts looked to the test enunciated in *United States v. Buss & Co.*, 5 Ct. Cust. Appls. 110, 113, T.D. 34138 (1914):

> The rule expressed by the decisions just cited recognizes the fact that most small articles are not produced as individual or separate products of the loom, but for economy of manufacture are first woven "in the piece." The rule of decision is therefore established that where such articles are imported in the piece and nothing remains to be done except to cut them apart they shall be treated for dutiable purposes as if already cut apart and assessed according to their individual character or identity. **This follows,** however, **only in case the character or identity of the articles is fixed with certainty and in case the woven piece In its entirety is not commercially capable of any other use.** [Emphasis added.]

As pointed out in *Coraggio*, at 145:

> The exact point in the processing at which material becomes a partly finished article must be determined on the basis of the circumstances of each case. * * * Whether an importation is characterized as a "material" or "article" will vary according to the statutory language of each case. See, *Sanwa*, 9 CIT at 169. *[Sanwa Foods, Inc. v. United States*, 9 CIT 167 (1985)]

Thus, with this is mind, the court distinguished *Doherty-Burrows*, in *Coraggio*, stating that in *Doherty-Burrows* that:

> "cut to length" was not a prerequisite to classification as a bale tie under the applicable tariff provision. * * * The character or identity of the merchandise in issue was fixed with certainty.

As Customs stated in HRL 083975, *Coraggio* is on point to the issue of whether the subject screening is "material" or a "part". The court distinguished *Doherty-Burrows* in *Coraggio* and we believe that for the same reasons it Is distinguishable here.

Similarly, Customs believes that HRL 082694 of April 11, 1989, which you cite for support, is distinguishable from the case at hand. The issue in that ruling was whether certain red cedar short boards were classifiable as unfinished shakes or shingles. *Doherty-Burrows* was on point for the decision in that ruling. Thus, for the same reasons *Doherty-Burrows* is not on point here, neither is HRL 082694.

Customs believes *Heraeus-Amersil* must be viewed in the light of the court's comment in *Coraggio* at 145 and cited above. It is a separate case dependent on the language of the provisions involved therein. In addition, we believe that in *Heraeus-Amersil* the court looked to the manner in which the contact tape at issue was used, the "weld-then-cut" contact tape application method, and the form the article had to be in to be used in that manner. The form of the subject screening in rolls is not a requirement of its ultimate use. Customs adheres to its position stated in HRL 083975 that the screening at issue is not a "part" and therefore cannot be classified in heading 8436, HTSUSA, as parts of agricultural equipment.

Holding:

The greenhouse screening at issue is classified as an other article of aluminum in subheading 7616.90.5080, HTSUSA, dutiable at 5.1 percent *ad valorem*. HRL 083975 is hereby modified to incorporate the analysis and classification set forth herein.

In accordance with section 625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF STEEL STRAPPING

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling pertaining to the tariff classification of various types of steel strapping. Notice of the proposed modification was published May 3, 1995, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This decision is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 21, 1995.

FOR FURTHER INFORMATION CONTACT: David W. Spence, Metals and Machinery Classification Branch, (202) 482–7030.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 3, 1995, Customs published a notice in the CUSTOMS BULLETIN, Volume 29, Number 18, proposing to modify District Director Ruling Letter (DD) 897178, issued on May 17, 1994, by the District Director of Customs, New Orleans, Louisiana, which held that zinc painted nonalloy steel strapping was classifiable under subheading 7212.30.10, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: [f]lat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, clad, plated or coated: [o]therwise plated or coated with zinc: [o]f a width of less than 300 mm: [o]f a thickness exceeding 0.25 mm or more. Also in the ruling, black painted nonalloy steel strapping was held to be classifiable under subheading 7212.40.10, HTSUS, which provides for: [f]lat-rolled products of iron or nonalloy steel, of a

width of less than 600 mm, clad, plated or coated: [p]ainted, varnished or coated with plastics: (o]f a width of less than 300 mm.

It is now our understanding, based upon the original information submitted by the importer, that DD 897178 was incomplete and incorrect with regard to the classification of the zinc painted steel strapping. No comments were received in response to the notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling DD 897178 to reflect the proper classification of the various types of steel strapping in the proper provisions under headings 7211, 7212, and 7217, HTSUS, as discussed in proposed HQ 957492. HQ 957492, modifying DD 897178, is set forth as the attachment to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

Dated: June 6, 1995.

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, June 6, 1995.

CLA–2 R:C:M 957492 DWS
Category: Classification
Tariff No. 7211.30.10,
7211.41.30, 7211.90.00,
7212.30.10, 7212.40.10,
7217.11.20 and 7217.19.50

MR. ROBERT GARCIA
R.W. SMITH & CO., INC.
P.O. Box 60587 AMF
Houston, TX 77205–0587

Re: Reconsideration of DD 897178; Ribbon Wound and Oscillated Wound Nonalloy Steel Strapping; Chapter 72, Notes 1(k) and (o); HQ 089538; NY 845896; *The Making, Shaping and Treating of Steel;* General Explanatory Note (IV)(C)(2)(d)(ii) to Chapter 72

DEAR MR. GARCIA:

This is in reference to DD 897178, issued to you on May 17, 1994, on behalf of Burseryds Bruk AB, by the District Director of Customs, New Orleans, Louisiana, concerning the classification of steel strapping under the Harmonized Tariff Schedule of the United States

(HTSUS). In reviewing DD 897178, we found that the holding therein was incomplete based upon the description of the merchandise you provided to Customs on April 19, 1994.

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of DD 897178 was published May 3, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 18.

Facts:

The merchandise consists of various types of steel strapping, which are cold-rolled and made of two grades of carbon or nonalloy steel. One grade contains by weight 0.06 percent to 0.11 percent of carbon, and the other grade contains by weight 0.11 percent to 0.18 percent of carbon. The strapping ranges in size from 19 mm × 0.50 mm to 32 mm × 1 mm. It is in either ribbon wound coils, which consist of successively superimposed layers, or oscillated wound coils, which consist of layers wound back and forth across a spool. The strapping is available in the following finishes: bright finished, waxed, blue annealed, black painted, green painted, zinc painted, and hot-dip galvanized. It is our understanding that bright finished products may be of high-strength steel. Zinc painted products are painted with an organic paint containing metallic zinc dust.

The subheadings under consideration are as follows:

7211.30.10: [f]lat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, not clad, plated or coated: [n]ot further worked than cold-rolled (cold-reduced), of high-strength steel: [o]f a width of less than 300 mm: [o]f a thickness exceeding 0.25 mm.

The general, column one rate of duty for goods classifiable under this provision is 3.1 percent *ad valorem*.

7211.41.30: * * *: [o]ther, not further worked than cold-rolled (cold-reduced): [c]ontaining by weight less than 0.25 percent of carbon: [o]f a width of less than 300 mm: [o]f a thickness exceeding 0.25 mm but not exceeding 1.25 mm.

The general, column one rate of duty for goods classifiable under this provision is 3.1 percent *ad valorem*.

7211.90.00: * * *: [o]ther.

The general, column one rate of duty for goods classifiable under this provision is 4.6 percent *ad valorem*.

7212.30.10: [f]lat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, clad, plated or coated: [o]therwise plated or coated with zinc: [o]f a width of less than 300 mm: [o]f a thickness exceeding 0.25 mm or more.

The general, column one rate of duty for goods classifiable under this provision is 3.1 percent *ad valorem*.

7212.40.10: * * *: [p]ainted, varnished or coated with plastics: [o]f a width of less than 300 mm.

The general, column one rate of duty for goods classifiable under this provision is 3.1 percent *ad valorem*.

7217.11.20: [w]ire of iron or nonalloy steel: [c]ontaining by weight less than 0.25 percent of carbon: [n]ot plated or coated, whether or not polished: [f]lat wire: [o]f a thickness exceeding 0.25 mm. But not exceeding 1.25 mm.

The general, column one rate of duty for goods classifiable under this provision is 2.9 percent *ad valorem*.

7217.19.50: * * *: [o]ther: [o]ther.

The general, column one rate of duty for goods classifiable under this provision is 4.8 percent *ad valorem*.

Issue:

Whether the various types of steel strapping are classifiable under subheading 7211.30.10, HTSUS, as flat-rolled products of nonalloy steel, not further worked than cold-

rolled, of high-strength steel, not coated, of a width less than 300 mm and a thickness exceeding 0.25 mm; under subheading 7211.41.30, HTSUS, as flat-rolled products of nonalloy steel, not further worked than cold-rolled, not coated, containing by weight less than 0.25 percent of carbon, of a width of less than 300 mm and a thickness exceeding 0.25 mm but not exceeding 1.25 mm; under subheading 7211.90.00, HTSUS, as other flat-rolled products of nonalloy steel, not further worked than cold-rolled of a width of less than 600 mm, not coated; under subheading 7212.30.10, HTSUS, as flat-rolled products of nonalloy steel, coated with zinc, of a width of less than 300 mm and a thickness exceeding 0.25 mm or more; under subheading 7212.40.10, as flat-rolled products of nonalloy steel, of a width of less than 300 mm, painted with plastics; under subheading 7217.11.20, HTSUS, as flat wire of nonalloy steel, containing by weight less than 0.25 percent of carbon, not coated, of a thickness exceeding 0.25 mm but not exceeding 1.25 mm; or under subheading 7217.19.50, HTSUS, as other wire of nonalloy steel, containing by weight less than 0.25 percent of carbon.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

In DD 897178, it was held that zinc painted steel strapping was classifiable under subheading 7212.30.10, HTSUS, and black painted steel strapping was classifiable under subheading 7212.40.10, HTSUS. It is now our understanding, based upon the original information you submitted, that DD 897178 was incomplete and incorrect with regard to the classification of the zinc painted steel strapping. Our classification analysis of all the merchandise follows.

BRIGHT FINISHED RIBBON WOUND STRAPPING

In part, Chapter 72, note 1(k), HTSUS, states:

> 1. In this chapter and, in the case of notes (d), (e) and (f) below throughout the tariff schedule, the following expressions have the meanings hereby assigned to them:
>
> (a)–(ij) xxx
>
> (k) *Flat-rolled products*
>
> Rolled products of solid rectangular (other than square) cross section, which do not conform to the definition at (ij) above in the form of:
>
> —coils of successively superimposed layers, * * *

Chapter 72, Additional U.S. Note 1(a), HTSUS, states:

> 1. For the purposes of the tariff schedule the following expressions have the meanings hereby assigned to them:
>
> (a) *High-strength steel*
>
> Flat-rolled products of a thickness of less than 3 mm and having a minimum yield point of 275 Mpa or of a thickness of 3 mm or more and having a minimum Yield point of 355 Mpa.

A bright finish on the Steel is created at the end of the of the cold reduction process, when an unpolished finish is applied to the steel through cold-rolling, annealing, and descaling. The application of the bright finish does not affect the classification of the steel strapping. *See* HQ 089538, dated August 7, 1991.

The bright finished ribbon wound steel strapping meets the above definition of flat-rolled products in that it is of solid rectangular cross section and is in the form of coils of successively superimposed layers. Therefore, the steel strapping is classifiable under either subheading 7211.30.10, HTSUS, or subheading 7211.41.30, HTSUS, depending upon whether it is of high-strength steel.

BLACK PAINTED, GREEN PAINTED, AND
ZINC PAINTED RIBBON WOUND STEEL STRAPPING

With regard to the zinc painted steel strapping, it is out position that the zinc paint does not constitute a metal coating. *The Making, Shaping and Treating of Steel* (10th Edition), delineates between metallic protective coatings and organic coatings. Metallic protective coatings are applied to steel by the following methods: hot-dip process, metal spraying, metal cementation, metal cladding, fusion welding of coatings, electroplating, cathode sputtering, and evaporation of condensation. Whereas, organic coatings are commonly

known as paints, varnishes, enamels, and lacquers. Paints are described as mixtures of pigments with drying oils, with varnish vehicles or with synthetic resins or polymers. Because the subject zinc paint consists of organic paint containing metallic zinc dust, it is a paint rather than a metal coating.

Consequently, the black painted, green painted, and zinc painted ribbon wound steel strapping is classifiable under subheading 7212.40.10, HTSUS.

ZINC HOT-DIP GALVANIZED RIBBON WOUND STEEL STRAPPING

As stated above, a zinc hot-dip galvanized coating is a metallic coating. Therefore, the zinc hot-dip galvanized ribbon wound steel strapping is classifiable under subheading 7212.30.10, HTSUS.

BLUE-ANNEALED RIBBON WOUND STEEL STRAPPING

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). In part, General Explanatory Note (IV)(C)(2)(d)(ii) to chapter 72, HTSUS (pp. 981–982), states:

(IV) **Production of finished products**

(A)–(B) xxx

(C) **Subsequent manufacture and finishing**

The finished products may be subjected to further finishing treatments or converted into other articles by a series of operations such as:

(1) xxx

(2) Surface treatments or other operations, including cladding, to improve the properties or appearance of the metal, protect it against rusting and corrosion, etc. Except as otherwise provided in the text of certain headings, such treatments do not affect the heading in which the goods are classified. They include:

(d) Surface finishing treatment, including:

(i) xxx

(ii) * * * blueing (blue annealing) * * *

Because the process of blue-annealing the steel strapping is considered a surface finishing treatment, because the steel strapping is "further worked", the blue-annealed ribbon wound steel strapping is classifiable under subheading 7211.90.00, HTSUS. *See* NY 845896, dated October 27, 1989.

BLUE-ANNEALED OSCILLATED WOUND STEEL STRAPPING

Chapter 72, note 1(o), HTSUS, states:

1. In this chapter and, in the case of notes (d), (e) and (f) below throughout the tariff schedule, the following expressions have the meanings hereby assigned to them:

(a)–(n) xxx

(o) *Wire*

Cold-formed products in coils, of any uniform solid cross section along their whole length which do not conform to the definition of flat-rolled products.

It is our position that oscillated wound steel strapping is, for classification purposes described as wire as it does not meet the definition of flat-rolled products under chapter 72, note 1(k), HTSUS. It consists of layers of material wound back and forth across a spool, as opposed to being wound in successively superimposed layers.

Therefore, because the blue-annealed oscillated wound steel strapping is not coated, it is classifiable under subheading 7217.11.20, HTSUS.

BLACK PAINTED, GREEN PAINTED, AND
ZINC PAINTED OSCILLATED WOUND STEEL STRAPPING

Because they are coated products, the black painted, green painted, and zinc painted oscillated wound steel strapping is classifiable under subheading 7217.19.50, HTSUS.

Holding:

The bright finished ribbon wound steel strapping, of high-strength steel, is classifiable under subheading 7211.30.10, HTSUS, as flat-rolled products of nonalloy steel, not further

worked than cold-rolled, of high-strength steel, not coated, of a width less than 300 mm and a thickness exceeding 0.25 mm.

The bright finished ribbon wound steel strapping, not of high-strength steel, is classifiable under subheading 7211.41.30, HTSUS, as flat-rolled products of nonalloy steel, not further worked than cold-rolled, not coated, containing by weight less than 0.25 percent of carbon, of a width of less than 300 mm and a thickness exceeding 0.25 mm but not exceeding 1.25 mm.

The black painted, green painted, and zinc painted ribbon wound steel strapping is classifiable under subheading 7212.40.10, as flat-rolled products of nonalloy steel, of a width of less than 300 mm, painted with plastics.

The zinc hot-dip galvanized ribbon wound steel strapping is classifiable under subheading 7212.30.10, HTSUS, as flat-rolled products of nonalloy steel, coated with zinc, of a width of less than 300 mm and a thickness exceeding 0.25 mm or more.

The blue-annealed ribbon wound steel strapping is classifiable under subheading 7211.90.00, HTSUS, as other flat-rolled products Of nonalloy steel, not further worked than cold-rolled, of a width of less than 600 mm, not coated.

The blue-annealed oscillated wound steel strapping is classifiable under subheading 7217.11.20, HTSUS, as flat wire of nonalloy steel, containing by weight less than 0.25 percent of carbon, not coated, of a thickness exceeding 0.25 mm but not exceeding 1.25 mm.

The black painted, green painted, and zinc painted oscillated steel strapping is classifiable under subheading 7217.19.50, HTSUS, as other wire of nonalloy steel, containing by weight less than 0.25 percent of carbon.

DD 897178, dated May 17, 1994, is modified to reflect the reasoning in this ruling. In accordance with section 625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations [19 CFR 177.10(c)(1)].

MARVIN M. AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF RULING LETTER RELATING TO CLASSIFICATION OF A YARN

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling pertaining to the tariff classification of a polyester yarn. Notice of the proposed modification was published May 3, 1995, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Textile Classification Branch, (202–482–7094).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 3, 1995, Customs published a notice in the CUSTOMS BULLETIN, Volume 29, Number 18, proposing to modify New York Ruling Let-

ter (NYRL) 890070 of September 20, 1993, which classified a polyester yarn as yarn (other than sewing thread) of synthetic staple fibers, not put up for retail sale, in subheading 5509.22.0010, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Classification of the yarn was based upon a report from the New York Customs laboratory indicating that the yarn was not "dressed". Based upon information that the yarn in fact was found to have dressing in the amount of 2.0 percent of the weight of the yarn, Customs is modifying NYRL 890070. No comments were received in response to our notice of intent to modify NYRL 890070.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying NYRL 890070 to reflect the proper classification of the polyester yarn as sewing thread of man-made staple fibers in subheading 5508.10.0000, HTSUSA. HRL 957614 modifying NYRL 890070 is set forth as an attachment to this document.

Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: June 6, 1995.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, June 6, 1995.

CLA–2 R:C:T 957614 CMR
Category: Classification
Tariff No. 5508.10.0000

MS. BETTY Y. K. HENRICKSON
SUPERIOR THREADS & YARNS
P.O. Box 1213
Kamuela, HI 96743

Re: Modification of New York Ruling Letter (NYRL) 890070 of September 20, 1993; classification of embroidery yarn.

DEAR MS. HENRICKSON:

On September 20, 1993, Customs issued Now York ruling letter (NYRL) 890070 to you regarding the classification of various yarns. information has come to the attention of this office that necessitates a modification of NYRL 890070 as it pertains to the classification of one yarn identified therein as item (B).

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed modification of (NYRL) 890070 was published May 3, 1995, in the CUSTOMS BULLETIN, Volume 29, Number 18.

Facts:

Item (B) is described in NYRL 890070 as a super spun 100 percent polyester 3-ply yarn measuring 84 metric number. The ruling indicates the yarn had a final "Z" twist and was put up an a plastic cone or tube. The yarn had a weight of 245.4 grams (including the support). The yarn was tested by the Customs New York laboratory which indicated that the yarn was not dressed. We have recently learned that the yarn in fact was found to have dressing in the amount of 2.0 percent of the weight of the yarn. As a result, a modification of NYRL 890070 is necessary to ensure uniformity in classification.

Issue:

Is the presence of 2.0 percent dressing material sufficient to consider a yarn dressed?

Law and Analysis:

In Headquarters Ruling Letter (HRL) 955524 of February 23, 1995, Customs classified yarns described as embroidery threads as sewing thread because it met the statutory definition of sewing thread set out in Note 5, Section XI, Harmonized Tariff Schedule of the United States (HTSUSA). Note 5 defines the term "sewing thread" as follows:

> For purposes of headings 5204, 5401 and 5508, the expression *"sewing thread"* means multiple (folded) or cabled yarn:
>
> (a) Put up on supports (for example, reels, tubes) of a weight (including support) not exceeding 1,000 g;
>
> (b) Dressed; and
>
> (c) With a final "Z" twist.

The yarns at issue in HRL 955524 were found by the Customs laboratory to be coated with from 1.2 to 3.1 percent by weight of silicone or paraffin wax. customs stated in HRL 955524:

> In defining "finishing treatment", the EN's [Explanatory Notes] require only the presence of a coating substance. Thus, the yarns in question have been given a finishing treatment and are dressed according to this definition.

Item (B) in NYRL 890070 had a dressing of 2.0 percent by weight. Following our decision in HRL 955524, item (B) is considered "dressed" for classification purposes. As item (B) meets the statutory definition for sewing thread, it is so classified.

Holding:

Item (B) is classified as sewing thread of man-made staple fibers, whether or not put up for retail sale, of synthetic staple fibers, in subheading 5508.10.0000, HTSUSA, textile category 200, dutiable at 12.8 percent *ad valorem*. NYRL 890070 is modified in respect to the classification of item (B) identified above.

In accordance with section 625, this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels),* an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF "ORIMULSION"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NYRL) 857187, dated, November 15, 1990, concerning the classification of a product known as "Orimulsion", composed of bitumen, water and a surfactant and used as a boiler fuel.

DATE: Comments must be received on or before July 21, 1995.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman W. King, Food and Chemicals Classification Branch, Office of Regulations and Rulings (202) 482–7020.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of "Orimulsion" a product composed of natural bitumen with the addition of water and a surfactant for safety in transportation purposes and is used as a boiler fuel.

NYRL 857187, dated November 15, 1990, held that "Orimulsion" was classified in subheading 2715.00.0000, Harmonized Tariff of the United states (HTSUS), which provides for bituminous mixtures based on natural bitumen, free of duty. Presumably, it was believed that the product, composed of natural bitumen to which was added a surfactant, was a manufactured product.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represents the official inter-

pretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation of the HTSUS. While the Customs Service is not bound by the EN in interpreting the HTSUS, the EN are to be given considerable weight in Customs-interpretation of the HTSUS. Effective February 1, 1995, headings 2714 and 2715 of the EN were amended to clarify that heading 2714 includes within its scope natural bitumen which has added to it mere water and a small amount of a surfactant to facilitate safety in handling or transport. The United States supported the amendments which reflect the view of the Customs Service that the product is classified in heading 2714.

Accordingly, Customs intends to revoke NYRL 857187, Attachment A to this document, to reflect the proper classification of "Orimulsion" in subheading 2714.90.0000, HTSUS, with a general free rate of duty.

Before taking this action, consideration will be given to any written comments timely received. Proposed Headquarters Ruling Letter 957455 revoking NYRL 857187 and classifying "Orimulsion" in subheading 2714.90.0000, HTSUS, is set forth in Attachment B of this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: June 6, 1995.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, November 15, 1990.
Tariff No. 2715.00.0000

MS. LYNN WRIGHT
EDWARDS & ANGELL
750 Lexington Avenue
New York, NY 10022

Re: The tariff classification of *Orimulsion* from Venezuela.

DEAR MS. WRIGHT:

In your letter dated October 12, 1990, on behalf of your client, Bitor America Corporation, you requested a tariff classification ruling.

The prospective import, *Orimulsion* is a natural bitumen (asphalt) which has been combined with water and stabilized with a surfactant to form an asphalt emulsion.

The applicable subheading for the *Orimulsion* will be 2715.00.000, Harmonized Tariff Schedule of the United States (HTS), which provides for bituminous mixtures based on

natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or mineral tar pitch. The rate of duty will be free.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC

CLA-2 R:C:F 957455 K
Category: Classification
Tariff No. 2714.90.00

MICHAEL D. SHERMAN, ESQ.
JOHN S. BREW, ESQ.
COUNSEL FOR BITOR AMERICA CORP.
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, N.W., Suite 400
Washington, DC 20007

Re: Revocation of New York Ruling Letter (NYRL) 857187; "Orimulsion".

DEAR SIRS:

In your letter of December 21, 1994, you requested that we revoke NYRL 857187, dated November 15, 1990, which held that a product known as "Orimulsion" from Venezuela, was classified as bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch, in subheading 2715.00.00, Harmonized Tariff of the United States (HTSUS), free of duty. You further requested that we rule that the product is classified as other bitumen, natural, in subheading 2714.90.00, HTSUS, also free of duty. This letter informs you that NYRL 857187 no longer reflects the views of the Customs Service. The following represents our position.

Facts:

The product contains 70 percent natural bitumen, 30 percent water, and less than 1 percent of a surfactant and it is used as a boiler fuel, primarily for electric utilities. It is stated that the water is added for transportation purposes and that the bitumen remains in its natural state.

Issue:

The issue is whether the product is a natural bitumen or a manufactured product based on bitumen.

Law and Analysis:

Subheading 2714.90.00, HTSUS, provides for bitumen, natural, whereas subheading 2715. 00.00, HTSUS, provides for bituminous mixtures based on natural bitumen.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represents the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation of the HTSUS. The EN represents the considered views of classification experts of the Harmonized System Committee. While the Customs Service is not bound by the EN in interpreting the HTSUS, the EN are to be given considerable weight in customs-interpretation of the HTSUS. It has, therefore, been the

practice of the Customs Service to consult the terms of the EN when interpreting the HTSUS.

In November 1994, the 14th Session of the Harmonized System Committee decided to amend the ENs to headings 27.14 and 27.15. The changes, effective February 1, 1995, are reported in Annex L/7 to document 38.960, as follows:

CHAPTER 27

Page 222. Heading 27.14.

1. *Third paragraph. New second and-third sentences.*

Insert the following now second and third sentences:

"The more addition of water to natural bitumen does not change the classification of the product for the purposes of heading 27.14. Further, the heading also includes dehydrated and pulverized natural bitumen dispersed in water and containing a small amount of an emulsifier (surfactant), added solely to facilitate safety, handling or transport."

2. *Fifth paragraph. Exclusions.*

Insert the following new exclusion (e):

"(e) Bituminous mixtures based on natural bitumen with added substances, other than water and emulsifiers (surfactants) necessary solely to facilitate safety, handling or transport *(heading 27,15)."*

Reletter present exclusion "(e)" as "(f)".

Page 223. Heading 27.15. Third paragraph. Exclusions.

Insert the following new exclusion (d):

"(d) Dehydrated and pulverized natural bitumen dispersed in water and containing a small amount of an emulsifier (surfactant), added solely to facilitate safety, handling or transport *heading 27.14)."*

Reletter present exclusions "(d)" and "(e)" as "(e)" and "(f)", respectively.

The United States supported the amendments to the EN and the amendments make it clear that natural bitumen with the mere addition of water and the addition of a small amount of emulsifier (surfactant) to facilitate safety in transportation is not a manufactured product so as to preclude classification in heading 2714. Accordingly, the product, known as "Orimulsion" described above, is classified as other bitumen, natural, in subheading 2714.90.00, HTSUS.

Holding:

The product known as "Orimulsion" containing 70 percent natural bitumen, with the addition of 30 percent water, and lose than I percent of a surfactant for safety in transportation purposes and used as a boiler fuel, is classified in subheading 2714.90.00, HTSUS, with a general free rate of duty.

NYRL 857187, dated November 15, 1990, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER RELATING TO CLASSIFICATION OF A WOMAN'S COTTON KNIT ROBE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a woman's cotton knit robe. Comments are invited to the correctness of the proposed ruling.

DATE: Comments must be received on or before July 21, 1995.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1301 Constitution Avenue, NW., Franklin Court, Washington, DC 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Textile Classification Branch, (202–482–7094).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a woman's cotton knit robe. The garment was classified as a knit dress in DD 806295 of February 22, 1995.

At the request of the importer, Customs has reviewed the decision in DD 806295 and examined a sample garment. Upon review, Customs believes the garment is properly classified as a woman's cotton knit robe.

DD 806295 is set forth in Attachment "A" to this document. Proposed HRL 957977 modifying DD 806295 is set forth in Attachment "B" to this document. Before taking this action, consideration will be given to any written comments timely received.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of public action of this notice.

Dated: May 31, 1995.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 22, 1995.

CLA2–61-CL:DD:CO:CB:I20
Category: Classification
Tariff No. 6104.42.0010 and 6114.20.0052

MS. KATHY REDEY
IMPORT SPECIALIST
EDDIE BAUER, INC.
15010 N.E. 36th Street
Redmond, WA 98052

Re: The tariff classification of a women's dress and a women's jumpsuit to be manufactured in Hong Kong.

DEAR MS. REDEY:

In your letter dated January 25, 1995, you requested a tariff classification ruling.

The submitted samples, designated style numbers 10672 and 10678, are a women's dress and a women's jumpsuit, respectively, manufactured from a 100% fine knit fabric.

The dress is pullover style, extends to below mid-calf and features a hood, a large patch pocket extending from the bottom of the rib cage to below the hips having two side upper openings, long, hemmed sleeves, and a straight, hemmed bottom.

The jumpsuit features a partial frontal opening secured by seven small plastic buttons, long sleeves with rib knit cuffs, a tunnel drawstring at the waist, and long legs with rib knit cuffs.

The dress is classifiable under subheading 6104.42.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's dresses, knitted or crocheted, of cotton. The applicable rate of duty is 12.1% *ad valorem*. This garment falls within textile category designation 336.

The jumpsuit is classifiable under HTS subheading 6114.20.0052, which provides for other women's coveralls, jumpsuits and similar apparel, knitted or crocheted, of cotton. The applicable rate of duty is 11.4%, *ad valorem*. This garment falls within textile category designation 359.

These garments are subject to quota restraints and visa requirements based on international textile trade agreements. The designated textile and apparel categories may be subdivided into parts. If so, quota restraints and visa requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

The samples are being returned to you, as requested.

This ruling is being issued under the provisions of section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN M. REGAN,
Acting District Director.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC

CLA–2 R:C:T 957977 CMR
Category: Classification
Tariff No. 6108.91.0030

MS. KATHY REDEY
EDDIE BAUER, INC.
15010 N.E. 36th Street
Redmond, WA 98052

Re: Modification of DD 806295 of February 22, 1995; classification of a woman's knit robe.

DEAR MS. REDEY:

This ruling is in response to your letter of March 16, 1995, requesting Customs reconsider the classification of a woman's knit garment classified in District Decision (DD) 806295 as a woman's knit dress of heading 6104, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). You claim the garment is a woman's knit robe and should be classified in heading 6108, HTSUSA. A sample garment was received with your submission.

Facts:

The garment at issue, item 10672, is identified by you as a jersey pullover robe. The garment is made of 100 percent cotton brushed Jersey knit fabric. The pullover garment is ankle-length and features a hood, long sleeves, a large double patch pocket in the front at about the waist to hip region (a kangaroo pouch pocket), nine inch slits on both sides extending upward from the bottom of the garment, and a plain, hemmed bottom. The garment is sized for a roomy, loose fit.

The garment will be manufactured in Hong Kong and entered through the ports of Seattle, Chicago and Columbus.

Issue:

Is item 10672 properly classified as a woman's knit dress of heading 6104, HTSUSA, or as a woman's knit robe of heading 6108, HTSUSA?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order]."

Heading 6104, HTSUSA, provides for, among other things, women's knit dresses. Heading 6108, HTSUSA, provides for, among other things, women's knit bathrobes, dressing gowns and similar articles. The Explanatory Notes (EN) to the *Harmonized Commodity Description and Coding System*, the official interpretation of the tariff at the international level, do not offer any helpful elaboration regarding knit dresses or robes.

The *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, (hereinafter *Guidelines)* were developed and revised in accordance with the HTSUSA to insure uniformity, to facilitate statistical classification, and to assist

in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles. They offer guidance to the trade community and Customs personnel as to various characteristics of garments. It is important, however, to remember that the Guidelines are not hard and fast rules, but guidance in drawing distinctions between classes of garments. As the EN offer no assistance in this case, it is proper to look to the *Guidelines*.

The *Guidelines* indicate that a dress is considered to be a one-piece garment appropriate for wear without other outer garments. In regard to robes, the *Guidelines* identify certain physical characteristics generally found in these garments, such as, looseness, long length (generally reaching to mid-thigh or below), and the usual presence of sleeves and a frontal opening. The *Guidelines* also indicate that these garments are worn in the home for comfort and are inappropriate for wear on social occasions in and outside the home.

The *Essential Terms of Fashion* by Charlotte Mankey Calasibetta defines "dress", in relevant part, at page 48, as: "Customarily the main item of apparel worn by women and girls in the Western hemisphere. May be made in one piece, cut in two pieces and joined with a waistline seam, or made in two separate pieces with each piece finished separately. * * *" From the same source, "robe" is defined, in relevant part, at page 156, as: "Informal clothing usually styled like a loose coat; may be sashed, buttoned, zipped, or hang loose. Worn over pajamas or nightgown, at the beach, or for informal entertaining at home. Current meaning of the word is a shortened form of the word bathrobe or *dressing robe.*"

We agree with your arguments that the garment has characteristics associated with robes and has the appearance of a robe. You submit this garment will be sold only via your catalog and will be described therein as a "pullover robe" and marketed as a robe. The presentation in the catalog makes clear the intended use of the garment as a robe and we agree that all factors indicate it will be principally used as such.

Holding:

Item 10672 is properly classified as a woman's knit cotton robe in subheading 6108.91.0030, HTSUSA, textile category 350, dutiable at 9 percent *ad valorem*.

DD 806295 is modified to accord with the above.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quota (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER RELATING TO CLASSIFICATION OF WOMEN'S COTTON FLANNEL BOXERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a pair of women's cotton flannel boxer shorts. Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before July 21, 1995.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attentions Commercial Rulings Division, 1301 Constitution Avenue, NW., Franklin Court, Washington, DC 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Textile Classification Branch, (202–482–7094).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of a pair of women's cotton flannel boxer shorts. The garment was classified as women's cotton shorts of subheading 6204.62.4055, Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in Headquarters Ruling Letter (HRL) 956506 of September 27, 1994. A subsequent ruling request by another party on the identical garment led to a decision that the garment was properly classified as women's other sleepwear, similar to pajamas and nightdresses in subheading 6208.91.3010, HTSUSA. In the interest of uniformity, Customs is proposing to modify HRL 956506.

HRL 956506 is set forth in Attachment "A" to this document. Proposed HRL 958009 modifying HRL 956506 is set forth in Attachment "B" to this document. Before taking this action, consideration will be given to any written comments timely received.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: May 31, 1995.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 27, 1994.

CLA–2 CO:R:C:T 956506 CMR
Category: Classification
Tariff No. 6204.62.4055

MR. WILLIAM ORTIZ
S.J. STILE ASSOCIATES LTD.
153–66 Rockaway Boulevard
Jamaica, New York 11434

Re: Classification of certain women's woven flannel boxers; sleepwear v. outerwear; 6208, HTSUSA, v. 6204, HTSUSA.

DEAR MR. ORTIZ:

This is in response to your letter of April 7, 1994, on behalf of Stafford Inc., requesting the classification of certain women's woven flannel boxers, style 2139, imported with a matching flannel carrying bag. The garment will be manufactured in China and imported through JFK Airport. A sample garment and carrying bag were received with your request.

Facts:

You describe style 2139 as a ladies 100 percent cotton boxer short. The garment is made of 100 percent cotton woven flannel fabric. It features an elasticized waist with the elastic exposed on the interior of the garment, a fake fly and typical boxer silhouette. The waist measurement of the relaxed waist is about 29 inches. The garment comes with a matching flannel bag with a drawstring closure. The bag features a large sewn-on label/patch which displays a drawing of its contents (boxers), the size of the garment (in this case, large), the word "FLANNELS" at the top, and the following description at the bottom: "CONTENTS: One 100 percent cotton flannel boxers", "NIGHTSHIRT SAME PLAID AS BAG".

Customs requested additional information on the boxers at issue and received copies of labels, sales order forms and a purchase contract. One of the label copies was similar to that which appears on the submitted flannel bag sample except that the label copy states: "BOXERS SAME PLAID AS BAG", "One 100 percent cotton flannel boxer". In view of this, we suspect the submitted sample bag may have a printing error.

Issue:

Are the boxers at issue classifiable as men's or women's boxers?

Are the submitted boxers classifiable as sleepwear of heading 6208, HTSUSA, or as outerwear of heading 6204, HTSUSA?

How is the carrying bag classified, i.e., separately or with the boxers as composite goods?

Law and Analysis:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRIs). GRI I provides that "classification shall be determined according to the

terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order]."

Note 8, Chapter 62, prescribes how garments are to be classified by gender. Note 8 provides:

> Garments of this chapter designed for left over right closure at the front shall be regarded as men's or boys' garments, and those designed for right over left closure at the front as women's or girls' garments. These provisions do not apply where the cut of the garment clearly indicates that it is designed for one or other of the sexes.
>
> Garments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments.

In this case, style 2139 has no closure. However, we believe that the cut of the garment is indicative of a women's garment as the boxers flare out somewhat from the waist as opposed to being straight on the sides. In addition, the presence of a fake fly is a feature more likely to be on a women's garment as opposed to a man's garment. Therefore, we accept that the submitted garment is a women's garment.

The issue of whether the submitted boxers are classifiable as sleepwear is more difficult to resolve. In determining the classification of garments submitted to be sleepwear, Customs considers the factors discussed in two decisions of the Court of International Trade which are often cited when discussing sleepwear. In *Mast Industries, Inc. v. United States*, 9 CIT 549, 552 (1985), *aff'd* 786 F.2d 1144 (CAFC, April 1, 1986) the Court of International-E-Trade dealt with the classification of a garment claimed to be sleepwear. The court cited several lexicographic sources, among them *Webster's Third New International Dictionary* which defined "nightclothes" as "garments to be worn to bed." In *Mast*, the court determined that the garment at issue therein was designed, manufactured, and used as nightwear and therefore was classifiable as nightwear. Similarly, in *St. Eve International, Inc. v. United States*, 11 CIT 224 (1987), the court ruled the garments at issue therein were manufactured, marketed and advertised as nightwear and were chiefly used as nightwear.

In contrast, the Court of International Trade disregarded claims regarding marketing and advertising in *Regaliti, Inc. v. United States*, Slip Op. 92–80, which dealt with the classification of garments known as leggings which were classified as pants by Customs and claimed by the importer to be classifiable as tights. In upholding Customs classification of the goods as pants, the court stated:

> Plaintiff's fashion merchandising experts testified that these items were "tights," and plaintiff advertises them as "tights." * * *
>
> **The court is not highly persuaded by plaintiffs invoices or advertising** calling the items "tights." To avoid pants quota limitations plaintiff must refer to the items as "tights."

In past rulings, Customs has stated that the crucial factor in the classification of a garment is the garment itself. As the court pointed out in *Mast*, "the merchandise itself may be strong evidence of use." *Mast* at 552, citing *United States v. Bruce Duncan Co.*, 50 CCPA 43, 46, C.A.D. 817 (1963). However, when presented with a garment which is somewhat ambiguous and not clearly recognizable as sleepwear or underwear or outerwear, Customs will consider other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise, such as purchase orders, invoices, and other internal documentation. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. For instance, Customs recognizes that internal documentation and descriptions on invoices may be self-serving as was noted by the court in *Regaliti*. Slip-Op. 92–80.

With these points in mind, Customs has reviewed the submitted classification request and we are not persuaded that the submitted garment is classifiable as sleepwear. In this case, the garment is not clearly sleepwear; it has the appearance of shorts. Although the flannel fabric, the label—"DOZE", and the exposed elastic waistband are features which may suggest sleepwear, these same features may be found in loungewear. Flannel is not a fabric used exclusively for sleepwear, and the company label does not identify the product, only the brand name.

This office requested further information regarding the advertising and marketing of the subject garment and did receive copies of purchase orders. The information supplied to us indicates the boxer short and matching bag are marketed as part of a line with sleepwear garments (e.g., nightshirts in a bag) to women's specialty lingerie stores and intimate

apparel departments of larger stores. This information, however, is insufficient to indicate the boxers themselves are sleepwear and principally used as such. Customs has long acknowledged that intimate apparel/sleepwear departments often sell a variety of merchandise besides sleepwear and intimate apparel, including garments intended to be worn as loungewear or other outerwear. See, HRL 955341 of May 12, 1994 and rulings cited therein; HRL 952105 of July 1992; HRL 085672 of October 29, 1989; and HRL 955088 of December 14, 1993.

It is our view that the subject boxer shorts belong to a class of garments known as loungewear, i.e., garments designed for comfortable wear in and around the home or as ultra-casual streetwear. We view the garment as a multi-purpose garment rather than a garment designed and used principally for wear to bed. As loungewear, the garment is classifiable as women's shorts.

The shorts packaged inside a matching flannel bag and the shorts and bag are sold together at retail. In HRL 955787 of April 26, 1994, Customs classified a pair of men's flannel boxers sold inside a matching carrying bag. In that ruling, Customs classified the carrying bag and shorts as a composite good. We stated therein:

> In HRL 087280, dated July 16, 1990 we addressed the tariff classification of a carrying bag imported with a poncho. The carrying bag was not specially shaped or fitted to hold its contents and was suitable for repetitive use. We concluded that the poncho and the bag constituted a composite article pursuant to General Rule of Interpretation 3(b), with the poncho imparting its essential character. Similarly, in HRL 086343, dated July 13, 1990, we classified a carrying bag sold with a windbreaker as a composite article with the essential character imparted by the garment. Recently, we classified a textile drawstring bag imported with blocks as a composite article and concluded that the blocks lent the essential character to the unit. The instant carrying bag is sold as a unit with the boxer shorts. It is not specially shaped or fitted to hold its contents and is suitable for repetitive use. Based upon the foregoing precedent the carrying bag and shorts shall be classified as a composite article. The shorts lend the essential character to the unit. Accordingly, the carrying bag shall be classified with the shorts.

As this case is virtually identical to the situation in HRL 955787, i.e., shorts in a bag, the goods at issue here are classified as composite goods and the shorts impart the essential character.

Holding:

Style 2139, the women's boxer shorts, and the matching flannel bag, are classified as composite goods. The goods are classified according to the classification for the boxer shorts. The women's cotton boxer shorts are classified as women's woven cotton shorts in subheading 6204.62.4055, HTSUSA, textile category 348, dutiable at 17.7 percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available **for inspection** at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC

CLA–2 R:C:T 958009 CMR
Category: Classification
Tariff No. 6208.91.3010

MR. WILLIAM ORTIZ
S.J. STILE ASSOCIATES LTD.
153–66 Rockaway Boulevard
Jamaica, NY 11434

Re: Modification of Headquarters Ruling Letter (HRL) 956506 of September 27, 1994; classification of women's woven flannel boxers.

DEAR MR. ORTIZ:

On September 27, 1994, Customs issued a ruling to you, HRL 956506, which you requested on behalf of Stafford Inc., classifying a pair of women's woven flannel boxers as shorts of subheading 6204.62.4055, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). As the result of a later request for a ruling on the identical garment by another party, Customs has reviewed the decision In HRL 956506 and found the outcome in error.

Facts:

The garment at issue in HRL 956506, style 2139, is described as a ladies 100 percent cotton boxer short. The garment is made of 100 percent cotton woven flannel fabric. It features an elasticized waist with the elastic exposed on the interior of the garment, a fake fly and typical boxer silhouette. The measurement of the relaxed waist is about 29 inches. The garment comes with a matching flannel bag with a drawstring closure. The bag features a large sewn-on label/patch which displays a drawing of its contents (boxers), the size of the garment (in this case, large), the word "FLANNELS" at the top, and the following description at the bottom: "CONTENTS: One 100 percent cotton flannel boxers", "NIGHTSHIRT SAME PLAID AS BAG".

Issue:

Is style 2139 properly classified as women's shorts or sleepwear?

Law and Analysis:

In HRL 957615 of May 24, 1995, Customs classified an identical garment as sleepwear similar to nightdresses and pajamas. In that ruling, the requester indicated the garment would be sold in its intimate apparel department where the customer could purchase the boxer separately or put it together with the matching nightshirt in a bag to rake a complete set of pajamas.

In that case, additional information was submitted indicating specifically how the garment would be displayed and sold in the intimate apparel department of the store. In addition, the garment had a sewn in label indicating it was a sleepwear garment. In *Mast,* 9 CIT 549, at 551, the court pointed out that the expert witnesses in that case agreed "that most consumers purchase and use a garment in the manner in which it is marketed." The sewn in label was a factor considered in determining how the garment was marketed and likely to be used by purchasers, though it was not determinative in and of itself.

Based upon the additional information regarding the specific marketing of the garment at the retail level and taking into consideration all of the information presented, Customs believed the garment was being held out to consumers as a sleepwear garment which was part of a sleepwear line including nightshirts in a bag and as such would principally be used as sleepwear.

The garment was identical to the garment in HRL 956506. The arguments put forth in both cases were similar, however in HRL 957615 the information provided included information from the retailer stating specifically the manner in which it would display and sell the good. This additional information led to a decision that the garment was properly classified as women's sleepwear.

Based upon the decision in HRL 957615 and in the interest of uniformity, Customs is modifying HRL 956506. The garment at issue therein, style 2139, is properly classified

as a sleepwear garment similar to pajamas and nightdresses in subheading 6208.91.3010, HTSUSA, textile category 352, dutiable at 11.8 percent *ad valorem*.

Holding:

Style 2139, the women's boxer shorts and the matching flannel bag, are classified as composite goods. The goods are classified according to the classification for the boxer shorts. The women's cotton boxer shorts are classified as sleepwear garments similar to pajamas and nightdresses in subheading 6208.91.3010, HTSUSA, textile category 352, dutiable at 11.8 percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

TARIFF CLASSIFICATION OF WATER RESISTANT GARMENTS WITH NON-WATER RESISTANT HOODS

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Withdrawal of proposed change of practice.

SUMMARY: Pursuant to the Customs Regulations, on December 5, 1994, Customs published notice in the Federal Register advising the public that Customs proposed a change of practice in regard to the classification of certain imported merchandise consisting of water resistant jackets with non-water resistant hoods, under the Harmonized Tariff Schedule of the United States (HTSUS). In response to that notice Customs received comments which were unanimous in opposition to the proposed change in practice. This document advises the public that Customs, after analyzing those comments, has decided not to change the practice in regard to these garments.

EFFECTIVE DATE: Withdrawal effective June 13, 1995.

FOR FURTHER INFORMATION CALL: Josephine Baiamonte, Commercial Rulings Division, U.S. Customs Service (202) 482–7050.

SUPPLEMENTAL INFORMATION:

BACKGROUND

Classification of merchandise under the Harmonized Tariff Schedule of the United States is in accordance with the General Rules of Interpretation (GRI 1). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Heading 6201, HTSUS, provides for, among other things, men's or boys' anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets). In Additional U.S. Note 2 to chapter 62, HTSUS, wherein the term "water resistant" is defined, it states that the "water resistant" requirement refers to the garment. Based on a review of that U.S. Note, Customs was of the opinion that Additional U.S. Note 2 had not been applied to its proper effect. Customs believed that the language of that Note did not suggest that only a portion of a garment be made water resistant in order for the entire garment to be classifiable as water resistant. Thus, the test as written, was interpreted to apply to the complete garment.

Accordingly, on December 5, 1994, Customs published a document in the Federal Register (59 FR 62452) proposing a change of practice pursuant to section 177.10(c)(1) of the Customs Regulation (19 CFR 177.10(c)(1)). Customs proposed that if the permanently attached hood of a water resistant garment is not similarly coated, the garment is precluded from classification as a water resistant garment.

DISCUSSION OF COMMENTS

All of the comments received were in opposition to the change of practice. Consistently, the argument was made that the essential func-

tion of the water resistant garment is to provide protection from inclement weather, regardless of the presence of a hood. Furthermore, it was stated that Additional U.S. Note 2 is silent as to the "coverage issue", i.e., the portion of the garment which must be coated to render it properly classified as a water resistant garment, and that any restriction in that language was based solely on Customs interpretation.

CONCLUSION

Water resistant garments are specifically provided for in Chapter 62, HTSUS. Customs has consistently held that when the outer shell of a garment is coated, this has been sufficient to impart to the garment, per se, a water resistant classification. In addition to water resistance, many garments have characteristic features which distinguish them from other water resistant garments. For example, some may have rib knit cuffs and collars, and other decorative trim which are not water resistant. In other cases, as is the case with the garments at issue here, the garments feature hoods which may or may not be permanently attached to the garment, or may be "tuck away" hoods which fold into the collar. In most cases these hoods are not coated.

Regardless of these additional features, the garment itself remains water resistant. Thus, a water resistant garment with no hood is no less water resistant than a garment with a hood, particularly when one considers that even on a garment with a permanently attached hood or "tuck away" hood, the wearer may decide not to exercise the hood option.

After a careful review of all the comments, it is our decision that the current practice is regard to these water resistant garments is correct. That is to say, water resistant garments with non-water resistant hoods (whether or not attached, or tuck-away) are properly classifiable within the appropriate provisions of Chapter 62, HTSUS, for water resistant garments.

SAMUEL H. BANKS,
Acting Commissioner of Customs.

Approved: May 19, 1995.

TIMOTHY G. SKUD,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, June 13, 1995 (60 FR 31181)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, June 6, 1995.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

THE TARIFF CLASSIFICATION OF "WALLETS ON A STRING"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of publication.

DATE: June 21, 1995.

FOR FURTHER INFORMATION CONTACT: Carlos Halasz, Textile Classification Branch, (202) 482–7059.

INFORMATION:

BACKGROUND

Heading 4202, Harmonized Tariff Schedule of the United States (HTSUS), provides in part for handbags and wallets. Subheadings 4202.22 through 4202.29, HTSUS, encompass handbags; subheadings 4202.31 through 4202.39, HTSUS, describe articles of a kind normally carried in the pocket or handbag (a.k.a. "flatgoods"). The subheading Explanatory Note to heading 4202, at page 613, indicates that wallets are classified as articles of a kind normally carried in the pocket or in the handbag.

"Wallets on a string" or "macro bags" are articles which combine the characteristics of wallets and handbags. In several recent ruling letters, articles described as "wallets on a string" have been classified as either handbags or flatgoods on a case-by-case basis. Affected parties have expressed their concern that Customs has been unable to insure uniformity of interpretation in this area.

In order to assist the trade community in complying with the Customs laws, and in accord with the Customs Modernization Act, section 625(e), Tariff Act of 1930 (19 U.S.C. 1625(e)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), Cus-

toms is publishing this Notice to facilitate uniformity in tariff treatment for these goods. The principles set forth in the Notice are in accord with published administrative rulings in this area and do not represent a change of policy.

NOTICE

Articles of a Kind Normally Carried in the Pocket or in the Handbag:

Such articles include wallets, which may be described as *flat* cases or containers *fitted* to hold credit/identification cards, paper currency, coins and in some instances a checkbook holder. Articles meeting this description which also possess a detachable carrying strap have been classified as flatgoods.

In order to be classifiable as a flatgood, the article must fit comfortably in a handbag or pocket. For example, rectangular or square cases measuring approximately 7½ inches by 4½ inches, or 4¾ inches by 4½ inches, in their closed position, have been classified as flatgoods.

Combining the characteristics of two flatgoods does not transform a flatgood into a handbag. Thus, the addition of a spectacle case holder to what is otherwise nothing more than a flat case with a carrying strap has been classified as a flatgood.

The addition of a wrap-around zipper does not in and of itself transform a flatgood into a handbag, particularly where the zipper functions merely to secure its contents in the closed or carrying position. Specifically, the presence of a zipper which simply holds the two halves of a wallet or similar container together, so that cards, currency and other articles in fitted compartments do not fall out, does not transform the case into a handbag.

Handbags:

A handbag functions as a carry-all container for various small personal effects:

A container which is not *fitted* to hold articles such as credit/identification cards, paper currency, coins or a checkbook holder is classifiable as a handbag. Therefore, a clutch bag or an evening bag measuring, for example, 7½ inches by 4½ inches, shall be classified as a handbag.

The determinative feature of a handbag is its ability to hold several objects not associated with a wallet. A bag which may accommodate articles such as a hairbrush, cosmetics, keys and other loose personal effects shall be classified as a handbag, even if it also incorporates the features of a flat case fitted to hold the items set forth above.

The presence of gusseted and/or zippered compartments will be taken into consideration in a determination of whether a case has generic carrying capacity. The presence of a wrap-around zipper may be an indication that the container is a carry-all if the zipper creates an inner space suitable for carrying three-dimensional objects.

The following Headquarters Ruling Letters (HRL) offer guidance in this area:

HRL 957246, dated March 29, 1995
HRL 957632, dated March 24, 1995
HRL 956829, dated December 8, 1994
HRL 956937, dated November 4, 1994
HRL 957220, dated October 31, 1994
HRL 955550, dated June 15, 1994
HRL 956016, dated June 9, 1994
HRL 956241, dated April 22, 1994

Headquarters review may be secured through the internal advice procedure.

Dated: May 25, 1995.

JOHN DURANT,
Director,
Commercial Rulings Division.

[The Headquarters Ruling Letters cited above follow this document.]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 29, 1993.

CLA–2 CO:R:C:T 957246 ch
Category: Classification
Tariff No. 4202.22.8050 and 4202.92.3030

STEVEN S. WEISER, ESQ.
AMY J. JOHANNESEN, ESQ.
SIEGEL, MANDELL & DAVIDSON, P.C.
One Astor Plaza
1515 Broadway, 43rd Floor
New York, NY 10036–8901

Re: New York Ruling Letter 803074 affirmed; classification of handbag/wallet; tote bag; shopping bag; travel bag; not a composite article.

DEAR MR. WEISER AND MS. JOHANNESEN:

This is in response to your letter, dated October 27, 1994, requesting reconsideration of New York Ruling Letter (NYRL), dated October 20, 1994, on behalf of your client, Liz Claiborne Accessories, Inc.. In that decision, a trifold container and a tote bag were separately classified as a handbag and a tote bag, respectively, under the Harmonized Tariff Schedule of the United States (HTSUS). Samples were sent to this office for examination and will be returned to you under separate cover.

Facts:

The submitted sample, style 80970, is comprised of two components. The first component is a trifold container closed by means of a double snap closure. It measures approximately 7½ inches in length and 4½ inches in width in its closed position and possesses a detachable shoulder strap. The article is composed primarily of nylon and opens to reveal a coin/utility pocket, a removable checkbook holder, an identification card window, credit card slots and a zippered pocket for paper currency. The exterior features a full length and width pocket with magnetic snap closure. The second component is a matching open top, double handle, tote bag measuring approximately 16½ inches by 15 inches. You indicate

that the tote bag will inserted into the exterior pocket of the trifold and the two components will be sold as a unit.

Issue:

Whether the trifold container is classifiable in subheading 4202.32, HTSUS, as an article of a kind normally carried in the pocket or in the handbag; or in subheading 4202.22, HTSUS, as a handbag?

Whether the trifold container and the tote bag are classified together as a composite article, pursuant to General Rule of Interpretation (GRI) 3(b); or are classified separately?

Law and Analysis:

Heading 4202, HTSUS, provides *inter alia* for handbags and wallets. Subheadings 4202.22 through 4202.29, HTSUS, encompass handbags; subheadings 4202.31 through 4202.39, HTSUS, describe articles of a kind normally carried in the pocket or handbag. The subheading Explanatory Note to heading 4202, at page 613, indicates that wallets are classified as an article of a kind normally carried in the pocket or in the handbag. Pursuant to General Rule of Interpretation 6, classification of goods at the subheading level shall be effected *mutatis mutandis* with General Rules of Interpretation 1 through 5.

The term "wallet" is not defined in the HTSUS or in the applicable Explanatory Note to heading 4202, HTSUS. However, we note the following definitions of the term "wallet" from lexicographic sources:

> *Essential Terms of Fashion: A Collection of Definitions,* Charlotte M. Calasibetta, Fairchild Publications, 1986: An item used to carry paper money, credit cards, photographs and sometimes with a change purse or space for a check book or pad.
>
> *The Fashion Dictionary,* Mary Brooks Picken, Funk & Wagnalls, 1973: 1. Flat purse or pocketbook, for carrying either paper money or coins.
>
> *Websters New Collegiate Dictionary,* G. & C. Merriam Co., 1977: 1. a bag for carrying miscellaneous articles while traveling; 2 a: billfold b: a pocketbook with compartments for change, photographs, cards, and keys.
>
> *Webster's New World Dictionary, Third College Edition,* Simon & Schuster, Inc., 1988: 1. [Archaic] a knapsack; 2. a flat pocketbook, as of leather, with compartments for paper money, cards, etc.; billfold.

We also recognize that the term "handbag" has been defined as follows:

> *Essential Terms of Fashion: A Collection of Definitions:* Accessory carried primarily by women and girls to hold such items as money, credit cards, and cosmetics.
>
> *The Fashion Dictionary:* Soft or rigid bag carried in hand or on arm. Size, shape, handle, etc., depend on fashion. Used by women as container for money and pocket-sized accessories.
>
> *Websters New Collegiate Dictionary:* 1. traveling bag; 2. a woman's bag held in the hand or hung from a shoulder strap and used for carrying small personal articles and money.
>
> *Websters New World Dictionary:* A bag, usually of leather or cloth, held in the hand or hung by a strap from the arm or shoulder and used, by women, to carry money, keys, and personal effects.

The trifold possesses attributes of both a wallet and a handbag. For example, it features credit card slots, pockets for paper currency/coins and an identification card window, which are associated with a wallet. On the other hand, it possesses a shoulder strap and a spacious exterior pocket suitable for holding various personal effects, which are characteristics of a handbag. As the item is described by two subheadings within heading 4202, HTSUS, we must resort to General Rule of Interpretation 3 to determine its proper classification.

Although the presence of a carrying strap permits the article to be worn on the shoulder in a manner consistent with a handbag, we conclude that a strap in and of itself should not affect its classification. In this regard, we note that the provision for handbags specifies that they may or may not have a shoulder strap. Moreover, in this instance the strap is detachable, suggesting a dual use for the merchandise as a handbag or a wallet.

We are of the opinion that the determinative feature of a handbag is its ability to hold several objects not associated with a wallet. In this instance, the interior of the container is fitted to hold objects associated with a wallet (i.e., credit cards, identification cards, paper currency and coins). However, the exterior pocket is spacious and may serve as a receptacle for a variety of personal effects. For example, we were able to place a small address book, small hairbrush, lipstick, nail polish and a set of keys on a chain into the pocket simulta-

neously. While you indicate that the tote bag will be inserted into the pocket at the time of importation, these articles may be separated and used individually after they are purchased. Although the trifold incorporates the features of a wallet, taken as a whole it has the character of a carry-all container. Consequently, it is classifiable as a handbag of subheading 4202.22, HTSUS.

GRI 3(b) states in pertinent part that composite goods consisting of different components shall be classified as if they consist of the component which gives them their essential character. Explanatory Note (EN) (IX), at page 4, provides that:

> For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with *separable components, provided these components are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.*
>
> Examples of the latter category of goods are:
>
> (1) Ashtrays consisting of a stand incorporating a removable ash bowl.
> (2) Household spice racks consisting of a specially designed frame (usually of wood) and an appropriate number of empty spice jars of suitable shape and size.
> (Emphasis added).

Thus, goods consisting of two or more components will be regarded as composite goods, provided that they are "mutually complementary" and "that together they form a whole which would not normally be offered for sale in separate parts."

You contend that the trifold and the tote bag are mutually complementary and note prior decisions where we have deemed it significant that components were color coordinated and adapted to one another. *See* Headquarters Ruling Letter (HRL) 951112, dated March 24, 1994 (HRL 950210, dated September 4, 1991, affirmed; swimshorts with matching belt are adapted to one another and form composite goods); HRL 081835, dated April 26, 1989 (blouse and tie of matching color constitute composite goods). Our attention is directed to a ruling in which we concluded that components which *may* be used separately were classified as a composite article. *See* HRL 950324, dated December 10, 1991 (nylon belt which could be used for other purposes classified with a lighting unit). Finally, you observe that on occasion Customs has regarded components as mutually complementary solely on the basis that they were composed of the same material. *See* NYRL 881356, dated January 29, 1993 (boxer shorts imported with drawstring pouch); NYRL 863176, dated June 5, 1991 (raincoat with carrying bag). As the instant components are composed of the same material and may be regarded as being adapted to one another, you conclude that they are mutually complementary.

In addition, you characterize the tote bag as "relatively flimsy" and argue that it would not normally be sold individually. Moreover, you reason that the components may be classified together so long as they "are not normally offered for sale separately by the importer." In other words, you buttress your claim by arguing that the importer would not actually sell these items separately as part of their product line. Consequently, you conclude that the trifold and the tote bag satisfy the criteria for a composite article.

However, the phrase "would not *normally* be sold in separate parts" does not refer to how the components are *actually* marketed. Rather, it pertains to whether the components would normally or principally be sold independently of one another. In the decisions set forth above, we concluded or implied that at least one of the components had no practical value when sold independently and was not of the type usually sold separately at retail. Thus, for example, insubstantial belts or ties were classified with garments so long as they were not of a kind normally sold in their own right. By way of contrast, we have determined that ties normally sold as separate accessory items are not classified with an accompanying playsuit. HRL 953063, dated June 8, 1993. In this instance, we conclude that there is a market for both the tote bag and the trifold as separate articles of commerce. Consequently, we conclude that the these items do not comprise a composite article and must be classified separately. We reserve judgment on whether the components are mutually complementary.

Chapter 42, Additional U.S. Note 1, states that:

> For the purposes of heading 4202, the expression *"travel, shorts and similar bags"* means goods, other than those failing in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

The tote bag meets the description of a travel bag and is similar to a shopping bag in this regard. Consequently, it is classifiable as a travel bag of subheading 4202.92, HTSUS.

Holding:

NYRL 803074 is hereby affirmed. The trifold is classifiable under subheading 4202.22.8050, HTSUS, which provides for handbags, whether or not with shoulder strap, including those without handle: with outer surface of textile materials: other: other, other, of man-made fibers. The applicable rate of duty is 19.8 percent *ad valorem*. The textile category is 670.

The tote bag is classifiable under subheading 4202.92.3030, HTSUS, which provides for travel, sports and similar bags: with outer surface of textile materials: other, other: of man-made fibers: other. The applicable rate of duty is 19.8 percent *ad valorem*. The textile category is 670.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are the subject of frequent negotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 24, 1995.

CLA–2 CO:R:C:T 957632 ch
Category: Classification
Tariff No. 4202.32.9550 and 4202.22.8050

DAVID KRAKAUER
RGA ACCESSORIES, INC.
4 West 33 Street
New York, NY 10001–3386

Re: Tariff classification of "wallets on a string"; handbag; articles of a kind normally carried in the pocket or in the handbag; wallet.

DEAR MR. KRAKAUER:

This is in response to your letter, dated January 23, 1995, requesting tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) for two articles described as "wallets on a string." Samples were sent to this office for examination.

Facts:

The first sample, style R1224, is a bifold container with a three-sided zipper closure. It features a detachable shoulder strap and measures approximately 7.25 inches in length, 4 inches in width and .5 inches thick in its closed position. A spectacle pouch secured by means of a snap flap has been affixed to the front exterior of the article. The opposite exterior wall features a zippered coin/utility pocket measuring approximately 2.25 inches by 5.5 inches. The interior possesses a total of ten credit card slots, an identification card window, a billfold section for paper currency and a removable checkbook cover. The exterior surface is composed of man-made textile materials, with a decorative suede leather patch on the front flap of the spectacle case holder.

The second sample, style R1225, is a container with a detachable shoulder strap measuring approximately 7.25 inches in length and 4.25 inches in width. It possesses a center zip-

pered compartment which has two gusseted sections. A trifold compartment with a decorative leather flap and snap closure has been affixed to the front of the article. The trifold opens to reveal a small mirror, three open pockets for paper currency and the like, three credit card slots, an identification card holder with clear window, a pen holder and a checkbook cover. In addition, the exterior of the trifold incorporates an open pocket. A spectacle case holder secured by means of hook and loop fasteners has been affixed to the rear the article. Style R1225 possesses an exterior surface composed mainly of man-made textile materials.

Issue:

What is the proper tariff classification for the subject merchandise?

Law and Analysis:

Heading 4202, HTSUS, provides *inter alia* for handbags and wallets. Subheadings 4202.22 through 4202.29, HTSUS, encompass handbags; subheadings 4202.31 through 4202.39, HTSUS, describe articles of a kind normally carried in the pocket or handbag. The subheading Explanatory Note to heading 4202, at page 613, indicates that wallets are classified as an article of a kind normally carried in the pocket or in the handbag. Pursuant to General Rule of Interpretation 6, classification of goods at the subheading level shall be effected *mutatis mutandis* with General Rules of Interpretation 1 through 5.

The term "wallet" is not defined in the HTSUS or in the applicable Explanatory Note to heading 4202, HTSUS. However, we note the following definitions of the term "wallet" from lexicographic sources:

> *Essential Terms of Fashion: A Collection of Definitions,* Charlotte M. Calasibetta, Fairchild Publications, 1986: An item used to carry paper money, credit cards, photographs and sometimes with a change purse or space for a check book or pad.
>
> *The Fashion Dictionary,* Mary Brooks Picken, Funk & Wagnalls, 1973: 1. Flat purse or pocketbook, for carrying either paper money or coins.
>
> *Webster's New Collegiate Dictionary,* G. & C. Merriam Co., 1977: 1. a bag for carrying miscellaneous articles while traveling; 2 a: billfold b: a pocketbook with compartments for change, photographs, cards, and keys.
>
> *Websters New World Dictionary, Third College Edition,* Simon & Schuster, Inc., 1988: 1. [Archaic] a knapsack; 2. a flat pocketbook, as of leather, with compartments for paper money, cards, etc.; billfold.

We also recognize that the term "handbag" has been defined as follows:

> *Essential Terms of Fashion: A Collection of Definitions:* Accessory carried primarily by women and girls to hold such items as money, credit cards, and cosmetics.
>
> *The Fashion Dictionary:* Soft or rigid bag carried in hand or on arm. Size, shape, handle, etc., depend on fashion. Used by women as container for money and pocket-sized accessories.
>
> *Websters New Collegiate Dictionary:* 1. traveling bag; 2. a woman's bag held in the hand or hung from a shoulder strap and used for carrying small personal articles and money.
>
> *Websters New World Dictionary:* A bag, usually of leather or cloth, held in the hand or hung by a strap from the arm or shoulder and used, by women, to carry money, keys, and personal effects.

The submitted samples possess attributes of both wallets and handbags. For example, they feature credit card slots, pockets for paper currency/coins and identification card windows, which are associated with wallets. On the other hand, these articles possess a shoulder strap and combine the features of more than a single flatgood (e.g., wallet, spectacle case). As the samples are described by two subheadings within heading 4202, HTSUS, we must resort to General Rule of Interpretation 3, in conjunction with General Rule of Interpretation 6, to determine their proper classification.

Although the presence of a carrying strap permits the articles to be worn on the shoulder in a manner consistent with a handbag, we conclude that a strap in and of itself should not affect their classification. In this regard, we note that the provision for handbags specifies that handbags may or may not have a shoulder strap. Moreover, in this instance the straps are detachable, suggesting a dual use for the merchandise as articles to be carried in a handbag. It should also be noted that as a class of merchandise wallets are *normally* carried in the pocket or in the handbag, notwithstanding the fact that it has recently become popular to carry these items by means of a shoulder strap.

Furthermore, we are of the opinion that the determinative feature of a handbag is its ability to hold several objects not associated with a wallet. In this instance, style R1224 is fitted to hold objects associated with a wallet. It is flat and possesses slots and pockets to hold credit cards, identification cards, paper currency and coins. In addition, it is of a size suitable for carrying in a handbag. We note that the addition of the spectacle case is a step in the direction of a handbag, as the article begins to take the character of a carry-all container. In addition, the zipper closure is not characteristic of a wallet. However, the article does not possess sufficient capacity to hold small personal effects which are typically carried in the handbag (e.g., hairbrush, cosmetics, keys on a chain). Moreover, the zipper closure merely prevents the contents from falling out and is not an indication that the article possesses extraneous carrying capacity. Consequently, we conclude that style R1224 is most specifically described by the provision for articles of a kind *normally* carried in the pocket or in the handbag.

By way of contrast, we regard style R1225 as a handbag. Although this item incorporates the features of a wallet, the center gusseted section provides ample room for holding keys on a chain, cosmetics and other miscellaneous effects. The trifold and the spectacle case augment the function of the article as a carry-all container. For these reasons, style R1225 is classifiable as a handbag of subheading 4202.22, HTSUS.

At the six-digit classification level, articles of heading 4202, HTSUS, are segregated according to the material composition of their outer surface. Heading 4202 indicates that handbags and wallets are classified therein if they are wholly or mainly covered with textile materials. Styles R1224 and R1225 are mainly covered with textile materials. We regard the decorative leather flaps as akin to trimming. Consequently, the articles possess an outer surface of textile materials for classification purposes.

Holding:

Style R1224 is classifiable under subheading 4202.32.9550, HTSUS, which provides for articles of a kind normally carried in the pocket or in the handbag, of manmade textile fibers. The applicable rate of duty is 19.8 *ad valorem*. The textile visa category is 670.

Style R1225 is classifiable under subheading 4202.22.8050, HTSUS, which provides for handbags, of man-made textile fibers. The applicable rate of duty is 19.8 *ad valorem*. The textile visa category is 670.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are the subject of frequent negotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

CYNTHIA REESE,
(for John Durant, Director,
Commercial Rulings Division.)

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 8, 1994.

CLA–2 CO:R:C:T 956829 ch
Category: Classification
Tariff No. 4202.22.1500

ARLEN T. EPSTEIN, ESQ.
SERKO & SIMON
One World Trade Center
Suite 3371
New York, NY 10048

Re: Tariff classification of handbags from China; articles of a kind normally carried in the pocket or in the handbag; wallet.

DEAR MR. EPSTEIN:

This is in response to your letter of July 27, 1994, on behalf of RGA Accessories, requesting tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) for two styles of articles described as "wallets on a string." Samples were submitted to this office for examination. Please be advised that we are retaining the samples in order to facilitate uniformity of classification in this area.

Facts:

The submitted samples are composed of leather. However, you advise that the imported merchandise will be composed of reinforced or laminated plastics. For the purposes of classifying these goods, we will assume that you are referring to articles with an outer surface of plastic sheeting, combined, or backed with textile materials.

The first sample is a navy bifold container with a detachable shoulder strap. It measures approximately 7½ inches in length, 4½ inches in width and is 1¼ inches thick in its closed position. A spectacle pouch closed by means of hook and loop fasteners has been affixed to the rear exterior of the article. A snap tab closure opens to reveal an interior which includes a zippered change pocket, nine credit card slots and an identification card window. It also possesses a check book holder inserted into a slot, a zippered pouch for holding paper currency and two open flat pockets. A zippered pocket which has been partitioned into two main sections has been placed between the spectacle pouch and the interior of the article. The pocket measures approximately 7½ inches by 4½ inches and opens to a width of approximately 3½ inches by means of a pair of gussets. The interior walls of the pocket possess two flat pockets measuring approximately 2 inches by 3½ inches, one of which contains a key chain.

The second sample is a black container with a detachable shoulder strap measuring approximately 7¾ inches in length and 4½ inches in width. It possesses gussets which allow the article to expand from a thickness of approximately ½ inch to 5½ inches. The exterior incorporates a spectacle pouch with a hook and loop fastener closure, as well as an open flat pocket measuring approximately 5½ inches by 4½ inches. The interior has been partitioned into three sections by two zippered pouches for coins or paper currency. one interior wall features slots for credit cards; the other an open flat pocket. A pen loop and a checkbook holder with an identification card window has been placed in one of the sections.

Issue:

Whether the subject merchandise is classifiable in subheading 4202.22, HTSUS, which provides for handbags; or subheading 4202.32, HTSUS, which provides for articles of a kind normally carried in the pocket or in the handbag?

Law and Analysis:

Heading 4202, HTSUS, provides *inter alia* for handbags and wallets. Subheading 4202.22, HTSUS, encompasses handbags; subheading 4202.32, HTSUS, includes articles of a kind normally carried in the pocket or handbag. The subheading Explanatory Note to heading 4202, at page 613, indicates that wallets are classified within subheading 4202.32. Pursuant to General Rule of Interpretation 6, classification of goods at the subheading level shall be effected *mutatis mutandis* with General Rules of Interpretation 1 through 5.

The term "wallet" is not defined in the HTSUS or in the applicable Explanatory Note to heading 4202, HTSUS. However, we note the following definitions of the term "wallet" from lexicographic sources:

Essential Terms of Fashion: A Collection of Definitions, Charlotte M. Calasibetta, Fairchild Publications, 1986: An item used to carry paper money, credit cards, photographs and sometimes with a change purse or space for a check book or pad.

The Fashion Dictionary, Mary Brooks Picken, Funk & Wagnalls, 1973: 1. Flat purse or pocketbook, for carrying either paper money or coins.

Webster's New Collegiate Dictionary, G. & C. Merriam Co., 1977: 1. a bag for carrying miscellaneous articles while traveling; 2 a: billfold b: a pocketbook with compartments for change, photographs, cards, and keys.

Webster's New World Dictionary, Third College Edition, Simon & Schuster 988: 1. [Archaic] a knapsack; 2. a flat pocketbook, as of leather, with compartments for paper money, cards, etc.; billfold.

We also recognize that the term "handbag" has been defined as follows:

Essential Terms of Fashion: A Collection of Definitions: Accessory carried primarily by women and girls to hold such items as money, credit cards, and cosmetics.

The Fashion Dictionary: Soft or rigid bag carried in hand or on arm. Size, shape, handle, etc., depend on fashion. Used by women as container for money and pocket-sized accessories.

Webster's New Collegiate Dictionary: 1. traveling bag; 2. a woman's bag held in the hang or hung from a shoulder strap and used for carrying small personal articles and money.

Webster's New World Dictionary: A bag, usually of leather or cloth, held in the hand or hung by a strap from the arm or shoulder and used, by women, to carry money, keys, and personal effects.

The submitted samples possess attributes of both wallets and handbags. For example, they feature credit card slots, pockets for paper currency/coins and identification card windows, which are associated with wallets. On the other hand, these articles possess shoulder straps and feature open and zippered pockets designed to carry a variety of personal effects, which are attributes of handbags. As the four samples are described by two subheadings within heading 4202, HTSUSA, we must resort to General Rule of Interpretation 3 to determine their proper classification.

In this instance, we regard the submitted samples as carryall containers. We recognize that these items incorporate certain attributes of a wallet. However, the articles possess large gusseted pockets so that they cannot be characterized as flat. The pockets are spacious and are suitable for carrying keys on a chain, small cosmetics, tissues, as well as a comb or lipstick and other personal effects. Accordingly, the two samples are classifiable as handbags.

Holding:

The subject merchandise is classifiable under subheading 4202.22.1500, HTSUS, which provides for handbags, whether or not with shoulder strap, including those without handle: with outer surface of sheeting of plastic. The applicable rate of duty 20 percent *ad valorem.*

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 4, 1994.

CLA-2 CO:R:C:T 956937 ch
Category: Classification
Tariff No. 4202.31.6000 and 4202.22.1500

STEVEN S. WEISER, ESQ.
AMY J. JOHANNESEN, ESQ.
SIEGEL, MANDELL & DAVIDSON, P.C.
One Astor Plaza
1515 Broadway
43rd Floor
New York, NY 10036-8901

Re: Tariff classification of wallets and handbags; articles of a kind normally carried in the pocket or in the handbag.

DEAR MR. WEISER AND MS. JOHANNESEN:

This is in response to your letter of July 28, 1994, on behalf of Liz Claiborne Accessories, Inc., requesting tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) for two articles which you describe as wallets. Samples were submitted to this office for examination. Please be advised that we are retaining the samples in order to facilitate uniformity of classification for similar articles.

Facts:

The first sample, style 91009, is a tri-fold leather accessory with a detachable carrying strap. It measures approximately 7¼ inches in height, 4½ inches in width and is approximately ½ inch thick in its closed position (exclusive of flaps). The exterior of the article features a zippered change/utility pocket, a flap which includes an identification card holder, an open flat pocket and snap closures for both top and bottom flaps. The interior includes slots for credit cards, an identification card holder, two flat zippered pockets for paper currency or coins, two narrow pockets of a size suitable for a checkbook, a removable plastic picture/business card holder, a small mirror and a pen holder.

The second sample, style 91108, is constructed of PVC plastic backed with a textile fabric. The article possesses a detachable carrying strap and measures approximately 7¼ inches in height, 4¼ inches in width and is approximately 1½ inches thick in its closed position. The exterior of the article features a pocket measuring approximately 6¾ inches by 4½ inches, with gussets which extend up to 1½ inches. The item also features a zippered coin/utility pocket and two exterior flaps with double snap closures, which allow the article to expand. The interior possesses slots for credit cards, an identification card holder, two flat zippered pockets for paper currency or coins, an open narrow pocket of a size suitable for a checkbook, a removable plastic picture/business card holder, a small mirror, a pen holder and a pocket measuring 6¼, inches by 4½ inches with a gusset running along one of its sides.

Issue:

Whether the subject merchandise is classified within subheadings 4202.21 through 4202.29, HTSUS, which provides for handbags; or within subheadings 4202.31 through 4202.39, HTSUS, which provides for articles of a kind normally carried in the pocket or in the handbag?

Law and Analysis:

Heading 4202, HTSUS, provides *inter alia* for handbags and wallets. Subheadings 4202.21 through 4202.29, HTSUS, encompass handbags; subheadings 4202.31 through 4202.39, HTSUS, provide for articles of a kind normally carried in the pocket or handbag. The subheading Explanatory Note to heading 4202, at page 613, indicates that wallets are classified within subheadings 4202.31 through 4202.39. Pursuant to General Rule of Interpretation 6, classification of goods at the subheading level shall be effected *mutatis mutandis* with General Rules of Interpretation 1 through 5.

The term "wallet" is not defined in the HTSUS or in the applicable Explanatory Note to heading 4202, HTSUS. However, we note the following definitions of the term "wallet" from lexicographic sources:

> *Essential Terms of Fashion: A Collection of Definitions,* Charlotte M. Calasibetta, Fairchild Publications, 1986: An item used to carry paper money, credit cards, photographs and sometimes with a change purse or space for a check book or pad.
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> *The Fashion Dictionary,* Mary Brooks Picken, Funk & Wagnalls, 1973: 1. Flat purse or pocketbook, for carrying either paper money or coins.
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> *Webster's New Collegiate Dictionary,* G. & C. Merriam Co., 1977: 1. a bag for carrying miscellaneous articles while traveling; 2 a: billfold b: a pocketbook with compartments for change, photographs, cards, and keys.
>
> *Webster's New World Dictionary, Third College Edition,* Simon & Schuster, Inc., 1988: 1. (Archaic) a knapsack; 2. a flat pocketbook, as of leather, with compartments for paper money, cards, etc.; billfold.

We also recognize that the term "handbag" has been defined as follows:

> *Essential Terms of Fashion: A Collection of Definitions:* Accessory carried primarily by women and. girls to hold such items as money, credit cards, and cosmetics.
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> *The Fashion Dictionary:* Soft or rigid bag carried in hand or on arm. Size, shape, handle, etc., depend on fashion. Used by women as container for money and pocket-sized accessories.
>
> *Webster's New Collegiate Dictionary:* 1. traveling bag; 2. a woman's bag held in the hand or hung from a shoulder strap and used for carrying small personal articles and money.
>
> *Webster's New World Dictionary:* A bag, usually of leather or cloth, held in the hand or hung by a strap from the arm or shoulder and used, by women, to carry money, keys, and personal effects.

The two samples possess attributes of both wallets and handbags. For example, they feature credit card slots, identification card windows and slots for paper currency and coins, which are associated with wallets. On the other hand, these articles possess shoulder straps and exhibit exterior features such as flaps, which permit the articles to resemble a handbag in appearance. As the samples are described by two subheadings within heading 4202, HTSUS, we must resort to General Rule of Interpretation 3 to determine their classification.

Style 91009 is fitted to hold articles associated with wallets (e.g. credit cards, coins, paper currency) and can be placed into a handbag. The article is flat and will not expand so as to comfortably accommodate items normally carried in a handbag, such as a hairbrush, cosmetics or a set of keys on a chain. Although the presence of the carrying strap permits the article to be worn on the shoulder in a manner consistent with a handbag, we conclude that the strap in and of itself should not affect its classification. In this regard, we note that the provision for handbags specifies that handbags may or may not have a shoulder strap. Moreover, as a class of merchandise, wallets are *normally* carried in the pocket or in the handbag, notwithstanding the fact that it has recently become popular to carry these items by means of a shoulder strap. Accordingly, style 91009 is most specifically described as a wallet.

Style 91108 has also been fitted to hold credit cards, coins, paper currency, etc. However, we note that the gussetted exterior pocket is large enough to be used as a compartment for various loose personal effects, such as keys, cosmetics, combs, etc. The dual flap closures with their double snaps allow the article to expand and indicates that it should not be regarded as flat. We are of the opinion that style 91108 is a carry-all container for various personal effects, despite the fact that it incorporates the features of a wallet. As the determinative feature of a handbag is its ability to hold several objects not associated with a wallet, we conclude this item is classifiable as a handbag.

Holding:

Style 91009 is classifiable under subheading 4202.31.6000, HTSUS, which provides *inter alia* for wallets: articles of a kind normally carried in the pocket or in the handbag: with outer surface of leather, of composition leather' or of patent leather: other. The applicable rate of duty 8 percent *ad valorem.*

Style 91108 is classifiable under subheading 4202.22.1500, HTSUS, which provides *inter alia* for handbags, whether or not with shoulder strap, including those without handle: with outer surface of sheeting of plastic. The applicable rate of duty is 20 percent *ad valorem*.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, October 31, 1994.

CLA–2 CO:R:C:T 957220 ch
Category: Classification
Tariff No. 4202.32.4000 and 4202.22.4500

ROBERT PERSILY
FREIGHT BROKERS INTERNATIONAL, INC.
1200 Brunswick Avenue
Far Rockaway, NY 11691

Re: Tariff classification of wallets and handbags; articles of a kind normally carried in the handbag or pocket.

DEAR MR. PERSILY:

This is in response to your letter of September 19, 1994, on behalf of Etienne Aigner, requesting tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS). Four samples were submitted to this office for examination. Please be advised that we are retaining the samples in order to insure uniformity of classification for similar articles.

Facts:

The four samples feature an exterior composed mainly of cotton with leather trim and/or flaps.

The first sample, style #01ES (Indexer on a String), is a tri-fold container with a detachable carrying strap. It measures approximately 4¾ inches in width, 4½ inches in height and is approximately 1 inch thick in its closed position. When opened the article measures approximately 8¼ inches in Height (excluding the flap). This item features an exterior change pocket secured by means of a snap flap, which measures approximately 3½ inches in height and 4¼ inches in width. The interior is composed of vinyl and possesses two billfold sections for paper currency and eight credit card slots.

The second sample, style #03ES (Eyeglass on a String), is a bifold accessory with a detachable shoulder strap. It measures approximately 7¼ inches in length, 3¾ inches in width and is ½ inches thick in its closed position. When opened, the item measures approximately 14¾ inches in length. A spectacle pouch secured by means of a snap flap has been affixed to the front exterior of the article. The opposite exterior wall features a zippered coin/utility pocket measuring approximately 2½ inches by 5¾ inches. The vinyl interior includes seven credit card slots, an identification card window, two billfold sections for paper currency and a flat utility pocket measuring approximately 5½ inches by 3 inches.

Style #02Es (Clutch Organizer on a String) is a tri-fold container with a detachable shoulder strap. It measures approximately 8 inches in width by 4¾ inches in height and is secured by means of a double snap closure which allows the article to expand. When opened, this item measures approximately 14¼ inches in height. The exterior possesses a zippered coin/utility pocket measuring approximately 2¾ inches by 6½ inches. The vinyl interior has been divided into thirds. The top third features a permanently affixed compact mirror and a full wall flat pocket suitable for paper currency. The middle third possesses a large gussetted pocket and a zippered wall pocket. Eight credit card slots have been affixed along the front of the gussetted pocket. A pen holder has been placed between the middle and bottom sections. The bottom third features a removable checkbook cover inserted into a slot, a clear plastic identification card window, a slot suitable for paper currency and a utility slot measuring approximately 6½ inches by 3 inches.

Style #6104 (Mini Bag Organizer) is a semi-oval shaped zippered bag with a permanently affixed shoulder strap. It measures approximately 5½ inches in height, 7½ inches wide and 1½ inches thick. A front full wall flap is secured to the main body by means of a snap closure. The flap opens to reveal a leather interior with eight credit card slots, two utility pockets measuring 4 inches by 7½ inches, a pen holder and an identification card window.

Hangtags affixed to the samples identify Etienne Aigner as an established manufacturer of handbags.

Issue:

Whether the subject merchandise is classified in subheading 4202.22, HTSUS, which provides for handbags; or subheading 4202.32, HTSUS, which provides for articles of a kind normally carried in the pocket or in the handbag?

Law and Analysis:

Heading 4202, HTSUS, provides *inter alia* for handbags and wallets. Subheading 4202.22, HTSUS, encompasses handbags; subheading 4202.32, HTSUS, includes articles of a kind normally carried in the pocket or handbag. The subheading Explanatory Note to heading 4202, at page 613, indicates that wallets are classified within subheading 4202.32. Pursuant to General Rule of Interpretation 6, classification of goods at the subheading level shall be effected *mutatis mutandis* with General Rules of Interpretation 1 through 5.

The term "wallet" is not defined in the HTSUS or in the applicable Explanatory Note to heading 4202, HTSUS. However, we note the following definitions of the term "wallet" from lexicographic sources:

> *Essential Terms of Fashion: A Collection of Definitions*, Charlotte M. Calasibetta, Fairchild Publications, 1986: An item used to carry paper money, credit cards, photographs and sometimes with a change purse or space for a check book or pad.
>
> *The Fashion Dictionary*, Mary Brooks Picken, Funk & Wagnalls, 1973: 1. Flat purse or pocketbook, for carrying either paper money or coins.
>
> *Webster's New Collegiate Dictionary*, G. & C. Merriam Co., 1977: 1. a bag for carrying miscellaneous articles while traveling; 2 a: billfold b: a pocketbook with compartments for change, photographs, cards, and keys.
>
> *Webster's New World Dictionary, Third College Edition*, Simon & Schuster, Inc., 1988: 1. (Archaic] a knapsack; 2. a flat pocketbook, as of leather, with compartments for paper money, cards, etc.; billfold.

We also recognize that the term "handbag" has been defined as follows:

> *Essential Terms of Fashion: A Collection of Definitions:* Accessory carried primarily by women and girls to hold such items as money, credit cards, and cosmetics.
>
> *The Fashion Dictionary:* soft or rigid bag carried in hand or on arm. Size, shape, handle, etc., depend on fashion. Used by women as container for money and pocket-sized accessories.
>
> *Webster's New Collegiate Dictionary:* 1. traveling bag; 2. a woman's bag held in the hand or hung from a shoulder strap and used for carrying small personal articles and money.
>
> *Webster's New World Dictionary:* A bag, usually of leather or cloth, held in the hand or hung by a strap from the arm or shoulder and used, by women, to carry money, keys, and personal effects.

Each of the four samples possess attributes of both wallets and handbags. For example, they feature credit card slots, paper currency pockets and identification card windows, which are associated with wallets. On the other hand, these articles possess shoulder straps and in some instances feature open and zippered pockets designed to carry a variety of personal effects, which are attributes of handbags. As the four samples are described by two subheadings within heading 4202, HTSUSA, we must resort to General Rule of Interpretation 3 to determine their proper classification.

In Headquarters Ruling Letter (HRL) 956241, dated April 22, 1994, we classified a container substantially similar to style #01ES. In that decision, we observed that the container was specially shaped or fitted to hold articles associated with wallets (e.g. credit cards, coins, paper currency) and would fit comfortably into a handbag. On the other hand, it was not large enough to accommodate items normally carried in a handbag, such as a hairbrush, cosmetics or a set of keys on a chain. Although the presence of the carrying strap suggested that it would **actually** be used in a manner consistent with a handbag, we determined that the strap in and of itself should not affect its classification. In addition, we were

of the opinion that the container was of the same class or kind as wallets. Accordingly, the article was classified as an article **normally** carried in the pocket or in the handbag. As sample style #01ES is substantially similar to the container which was the subject of HRL 956241, it shall also be classified as an article of a kind normally carried in the pocket or in the handbag.

Similarly, style #03ES is also of the same class or kind as a wallet. It is flat, fitted to hold credit cards, identification cards, paper currency and coins. We note that the addition of a spectacle case holder is a step in the direction of a handbag, as the article begins to take the character of a carry-all container. However, the article does not possess compartments designed to carry small personal effects which are typically carried in the handbag (e.g. comb, pen, hairbrush, cosmetics, keys on a chain). Consequently, in this instance we conclude that style #03ES is most specifically described by the provision for articles of a kind normally carried in the pocket or in the handbag.

Style #02Es, on the other hand, must be regarded as a carrying bag. We recognize that this item incorporates certain attributes of a wallet, such as credit card slots, an identification card window and a pocket for paper currency. However, it is more in the nature of a carry-all accessory than a wallet. For example, the center gussetted pocket is large enough to hold keys, small cosmetics, tissues, as well as a comb or lipstick and other personal effects. In addition, the article has been fitted so as to include a pen, a mirror and has several slots for odds and ends. Consequently, we conclude that style #02ES is classifiable as a handbag.

The main body of style #6104 is a clutch bag which features a single large compartment suitable for carrying keys, cosmetics, a hairbrush, etc. The article features a side flap which, when opened, reveals slots for identification and credit cards, paper currency and a pen holder. These are features associated with a wallet. However, when viewing the article as a whole, the fitted slots are features which augment its main purpose as a carrying bag for various personal effects. Accordingly, style #6104 is also classifiable as a handbag.

Holding:

Styles #01ES and #03ES are classifiable under subheading 4202.32.4000, HTSUS, which provides *inter alia* for wallets: articles of a kind normally carried in the pocket or in the handbag: with outer surface of textile materials: of vegetable fibers and not of pile or tufted construction: of cotton. The applicable rate of duty 7.2 percent *ad valorem*. The textile quota category is 369.

Styles #02ES and #6104 are classifiable under subheading 4202.22.4500, HTSUS, which provides *inter alia* for handbags, whether or not with shoulder strap, including those without handle: with outer surface of textile materials: other: of vegetable fibers and not of pile or tufted construction: of cotton. The applicable rate of duty is 7.2 percent *ad valorem*. The textile quota category is 369.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are the subject of frequent negotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, June 15, 1994.

CLA–2 CO:R:C:T 955550 ch
Category: Classification
Tariff No. 4202.32.1000 and 4202.22.1500

JOEL K. SIMON, ESQ.
SERKO & SIMON
One World Trade Center
Suite 3371
New York, NY 10048

Re: Tariff classification of wallets and handbags; articles of a kind normally carried in the handbag or pocket.

DEAR MR. SIMON:

This is in response to your letter of December 14, 1993, on behalf of Fashion Accessories Shippers Association, Inc., requesting tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for certain styles of what you describe as "wallets on a string." Samples were provided to this office for examination.

Facts:

Sample number 1 is a brown and black tri-fold container with a snap button closure and a carrying strap. It measures approximately 4⅞ inches in width, 4¾ inches in height and is 1 inch thick in its closed position. When opened sample number 1 measures approximately 12 inches in height. This article features an exterior zippered change pocket measuring approximately 3¾ inches by 3 inches. Beneath this compartment is an open inner pocket of similar dimensions in which the strap may be placed. The interior possesses a zippered pocket suitable for holding paper currency which measures approximately 7 inches in length by 3¾ inches in height. In addition, the interior has five credit card slots and a view window for an identification card. The exterior cover is composed of a cellular plastic sheet which has been embossed to simulate leather. It is backed with a woven brushed textile fabric.

Sample number 2, style YT6880, is a black tri-fold container with a snap closure and a detachable shoulder strap. The container possesses gold tone clasps on three corners so that it may be carried either vertically or horizontally. Style YT6880 measures approximately 7½ inches in length, 4½ inches in width and is 1½ inches thick in its closed position. It measures approximately 17 inches in length when opened. A spectacle pouch secured by means of hook and loop fasteners has been affixed to the rear exterior of the article. The exterior also includes a decorative gold tone metal plate which has been engraved with the legend "Costanza" over the closure. The interior includes a zippered change pocket, six credit card slots and an identification card window. It also possesses a check book holder inserted into a slot, a zippered pouch for holding paper currency and three thin open pockets for small flat personal effects. The outer surface of this article is composed of a cellular plastic sheet embossed to simulate leather. The plastic sheet is backed with a woven textile fabric.

Sample number 3 is a black fold over container with a snap closure and a detachable shoulder strap affixed by means of two gold tone clasps. This article measures approximately 7¼ inches in width, 4⅞ inches in height and is 1 inch thick when closed. When opened, it measures approximately 10 inches in height. A gusseted spectacle pouch secured by means of hook and loop fasteners has been affixed to the exterior of the container. An open pouch with a permanently attached retractable make-up mirror is sandwiched between the spectacle pouch and the exterior of the bag. A gold tone metal sphere with the legend "Michael Stevens" has been placed over the snap closure. The interior has been divided into top and bottom halves. The bottom half features three layered zippered pouches designed to carry small personal effects. An open flat pocket is located behind the pouches. The top half of the container possesses a clear identification card holder, five credit card slots and a billfold section. A pen holder has been placed at the spine, between the top and bottom halves of the container. The outer surface of the container is comprised of embossed cellular plastic with a woven textile backing.

Sample number 4 is a container with flap secured by means of a snap closure. It possesses a detachable shoulder strap which is affixed to the article by means of four snap fasteners,

two at each end. This item measures approximately 5¾ inches by 4¾ inches. It is approximately 1½ inches thick in its closed position. However, when opened three pairs of gussets allow the container to expand to approximately 6½ inches. The rear exterior possesses a belt loop and an open pocket for small flat personal effects. A gold tone ornament is located over the closure. The interior of the flap contains an identification card window and an open pocket. The main body contains two gusseted open pockets, a gusseted zippered section, an open pocket with a permanently attached retractable mirror/credit card holder, two credit card slots and an open pocket against the rear wall. Sample number 4 possesses an outer surface of cellular plastic sheeting with a metallic exterior finish, backed with a woven textile material. It is stitched to layers of foam and textile fabric, which imparts a quilted appearance to the exterior.

Issue:

Whether the subject merchandise is classified in subheading 4202.22, HTSUSA, which provides for handbags; or subheading 4202.32, HTSUSA, which provides for articles of a kind normally carried in the pocket or in the handbag?

Law and Analysis:

Heading 4202, HTSUSA, provides *inter alia* for handbags and wallets. Subheading 4202.22, HTSUSA, encompasses handbags, whether or not with shoulder strap, with outer surface of textile materials. Subheading 4202.32, HTSUSA, includes articles of a kind normally carried in the pocket or handbag, with outer surface of textile materials. The subheading Explanatory Note to heading 4202, at page 613, indicates that wallets are classified within subheading 4202.32. Pursuant to General Rule of Interpretation 6, classification of goods at the subheading level shall be effected *mutatis mutandis* with General Rules of Interpretation 1 through 5.

The term "wallet" is not defined in the HTSUSA or in the applicable Explanatory Note to heading 4202, HTSUSA. However, we note the following definitions of the term "wallet" from lexicographic sources:

> *Essential Terms of Fashion: A Collection of Definitions,* Charlotte M. Calasibetta Fairchild Publications, 1986: An item used to carry paper money, credit cards, photographs and sometimes with a change purse or space for a check book or pad.
>
> *The Fashion Dictionary,* Mary Brooks Picken, Funk & Wagnalls, 1973: 1. Flat purse or pocketbook, for carrying either paper money or coins.
>
> *Webster's New Collegiate Dictionary,* G. & C. Merriam Co., 1977: 1. a bag for carrying miscellaneous articles while traveling; 2 a: billfold b: a pocketbook with compartments for change, photographs, cards, and keys.
>
> *Webster's New World Dictionary, Third College Edition,* Simon & Schuster, Inc., 1988: 1. [Archaic] a knapsack; 2. a flat pocketbook, as of leather, with compartments for paper money, cards, etc.; billfold.

We also recognize that the term "handbag" has been defined as follows:

> *Essential Terms of Fashion: A Collection of Definitions:* Accessory carried primarily by women and girls to hold such items as money, credit cards, and cosmetics.
>
> *The Fashion Dictionary:* Soft or rigid bag carried in hand or on arm. Size, shape, handle, etc., depend on fashion. Used by women as container for money and pocket-sized accessories.
>
> *Webster's New Collegiate Dictionary:* 1. traveling bag; 2. a woman's bag held in the hand or hung from a shoulder strap and used for carrying small personal articles and money.
>
> *Webster's New World Dictionary:* A bag, usually of leather or cloth, held in the hand or hung by a strap from the arm or shoulder and used, by women, to carry money, keys, and personal effects.

Each of the four samples possess attributes of both wallets and handbags. For example, they are flat and feature credit card slots, paper currency pockets and identification card windows, which are associated with wallets and are normally carried in the pocket or handbag. On the other hand, these articles possess shoulder straps and contain open and zippered pockets designed to carry a variety of personal effects, which are attributes of handbags. As the four samples are described by two subheadings within heading 4202, HTSUSA, we must resort to General Rule of Interpretation 3 to determine their proper classification.

In Headquarters Ruling Letter (HRL) 956241, dated April 22, 1994, we classified a container substantially similar to sample number 1. In that decision, we observed that the con-

tainer was specially shaped or fitted to hold articles associated with wallets and would fit comfortably into a handbag. On the other hand, it was not large enough to accommodate items normally carried in a handbag, such as a hairbrush, cosmetics or a set of keys on a chain. Although the presence of the carrying strap suggested that it would **actually** be used in a manner consistent with a handbag, we determined that the strap in and of itself should not affect its classification. In addition, we were of the opinion that the container was of the same class or kind as wallets. Accordingly, the article was classified as an article **normally** carried in the pocket or in the handbag. As sample number 1 is substantially similar to the container which was the subject of HRL 956241, it shall also be classified as an article of a kind normally carried in the pocket or in the handbag.

Similarly, sample number 2 is also of the same class or kind as a wallet. It is flat, fitted to hold credit cards, identification cards, paper currency and coins. The presence of a flat check book holder does not alter its fundamental character. The article does not possess compartments designed to carry small personal effects which are typically carried in the handbag (e.g. comb, pen, hairbrush, cosmetics, keys on a chain). We note that the addition of a spectacle case holder is a step in the direction of a handbag, as the article begins to take the character of a carry-all container. However, in this instance we conclude that sample number 2 is most specifically described by the provision for articles of a kind normally carried in the pocket or in the handbag.

On the other hand, the provision for handbags more accurately describes sample number 3. We recognize that this item possesses certain attributes of a wallet, such as credit card slots, an identification card window and a pocket for paper currency. However, it is more in the nature of a traveling bag than an article carried in the handbag. The three zippered pouches are large enough to hold keys, small cosmetics, tissues, as well as a comb or lipstick and other small personal effects. In addition, the article has been fitted so as to include a pen, a retractable mirror and a spectacle case. Although it will not accommodate larger possessions often found in a handbag (e.g. hairbrush), we conclude that it has been designed to be used principally as a carrying bag. Consequently, it is classifiable as a handbag of subheading 4202.22, HTSUSA.

Sample number 4 is also most specifically described by the provision for handbags. The slots for identification/credit cards and the pocket for paper currency are features ancillary to the main purpose of the bag. The article is comprised primarily of open and zippered gusseted pockets which may accommodate a variety of small personal effects not normally associated with wallets or other articles normally carried in the handbag (e.g. set of keys, comb, lipstick). The presence of the shoulder strap and belt loop taken together suggest that this item will be used primarily as a carrying bag. On this basis, sample number 4 shall be classified as a handbag.

Holding:

Samples 1 and 2 are classifiable under subheading 4202.32.1000, HTSUSA, which provides *inter alia* for wallets: articles of a kind normally carried in the pocket or in the handbag: with outer surface of sheeting of plastic: of reinforced or laminated plastics. The applicable rate of duty is 12.1 cents/kilogram + 4.6 percent *ad valorem*.

Samples 3 and 4 are classifiable under subheading 4202.22.1500, HTSUSA, which provides *inter alia* for handbags, whether or not with shoulder strap, including those without handle: with outer surface of sheeting of plastic. The applicable rate of duty is 20 percent *ad valorem*.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, June 9, 1994.
CLA–2 CO:R:C:T 956016 NLP
Category: Classification
Tariff No. 4202.32.1000

KIM GREENWOOD
CUSTOMS IMPORT ADMINISTRATION
ESPRIT DE CORP.
900 Minnesota Street
San Francisco, CA 94107

Re: Modification of PC 890021 and PC 887252; Heading 4202; ENs to heading 4202; wallets; handbags; articles of a kind normally carried in the handbag or pocket; HRLs 956241, 082265, 083992 and 088245.

DEAR MS. GREENWOOD:

On July 12, 1993, and September 16, 1993, Customs issued to Esprit De Corp., Pre-Entry Classification Ruling Letters (PC) 887252 and 890021, respectively, which classified various containers under the Harmonized Tariff Schedule of the United States (HTSUS). In a letter to Customs Headquarters, dated February 28, 1994, you requested that we reconsider the classification of four styles of containers subject to these rulings. Upon review, we are of the opinion that the classifications of the four containers were incorrect and this ruling modifies those classifications.

Facts:

The four containers at issue, style nos. 870492, 870538, 17602 and 170034, are tri-fold in design with removable shoulder or neck straps and are made up of PVC plastic laminated over a textile backing. The measurements of each style are as follows:

STYLE 870492: 4 1/16 inches by 4 5/8 inches by 3/4 of an inch
STYLE 870538: 4 1/8 inches by 4 5/8 inches by 5/8 of an inch
STYLE 17602: 4 1/4 inches by 4 5/8 inches by 3/4 of an inch
STYLE 170034: 4 3/8 inches by 4 5/8 inches by 3/4 of an inch

Each container measures approximately 11½ inches in length when fully opened. They close by means of a single snap. The fitted interior of each container includes three credit card slots, an identification card slot with a clear window and two larger slots for other small, flat personal items. Each container has an open slot on the lower two-thirds left hand side which is suitable for holding paper currency. The exterior possesses a small zippered pocket for coins. The "ESPRIT" logo appears on the front of each article in the form of either an embossing or an affixed metallic emblem. In addition, each container has a removable, closed loop shoulder or neck strap which measures ¼ inch wide, varies in length from 26 inches to 28⅜ inches and is held in place by snaps or placed under a sewn on, snap down flap.

PC 887252 classified styles 870492 and 870538 in subheading 4202.22.1500, HTSUS, which provides for "[t]runks, suitcases * * *; traveling bags, toiletry bags, knapsacks and backpacks, handbags * * *: [h]andbags, whether or not with shoulder strap, including those without handle: [w]ith outer surface of sheeting of plastic or of textile materials: [w]ith outer surface of sheeting of plastic." PC 890021 also classified styles 17602 and 170034 in subheading 4202.22.1500, HTSUS.

It is your position that the articles are classifiable in subheading 4202.32.1000, HTSUS, which provides for "[t]runks, suitcases * * *; traveling bags, toiletry bags, knapsacks and backpacks, handbags * * *: [a]rticles of a kind normally carried in the pocket or in the handbag: [w]ith outer surface of sheeting of plastic or of textile materials: [w]ith outer surface of sheeting of plastic: [o]f reinforced or laminated plastics."

Issue:

Are the subject tri-fold containers classifiable as handbags in subheading 4202.22.1500, HTSUS, or as articles normally carried in the pocket or in the handbag in subheading 4202.32.1000, HTSUS?

Law and Analysis:

The classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined

according to the terms of the headings and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may be applied, taken in order.

Heading 4202, HTSUS, provides for the following:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.

Thus, handbags, wallets and similar containers with outer surface of plastic sheeting are classifiable under heading 4202, HTSUS.

Subheading 4202.22, HTSUS, provides for handbags with outer surface of sheeting of plastic. On the other hand, subheading 4202.32, HTSUS, encompasses articles of a kind normally carried in the pocket or in the handbag with outer surface of sheeting of plastic. The terms "handbags" and "articles of a kind normally carried in the pocket or in the handbag" are not defined in the HTSUS. However, examples of the latter category are set forth in the Harmonized Commodity Description and Coding System Explanatory Note to heading 4202, at page 613:

Subheadings 4202.31, 4202.32 and 4202.39

> These subheadings cover articles of a kind normally carried in the pocket or in the handbag and include spectacle cases, note-cases (bill-folds), wallets, key-cases, cigarette-cases, cigar-cases, pipe-cases and tobacco-pouches.

Clearly wallets are within the scope of the above subheadings that cover articles of a kind normally carried in the pocket or handbag.

In Headquarters Ruling Letter (HRL) 956241, dated April 22, 1994, we classified goods substantially similar in design to the instant merchandise. Though the container in that case was made out of cotton denim, it had a tri-fold design, measured approximately 6 inches by 5½ inches, was fitted with four credit card slots, an identification card slot with a window, two vinyl lined zippered compartments, one of which was designed to hold paper currency. It also had an exterior zippered compartment and a shoulder strap. Citing lexicographic sources, we observed that the container was **prima facie** classifiable as a wallet, which is regarded as an article of a kind normally carried in the pocket or in the handbag. However, it also had certain features associated with handbags and was, therefore, **prima facie** classifiable as a handbag. As both of these subheadings described the merchandise, we resorted to the principles of GRI 3 to determine the proper classification.

We determined that the term "wallet" most specifically described the tri-fold article. We stated that "[w]allets are usually specially shaped or fitted to hold articles such as paper currency, credit cards, coins and identification cards." Moreover, subheading 4202.32, HTSUS, provides for "articles of a kind normally carried in the pocket or in the handbag," which implies that wallets must be small enough for this purpose. Based on the size and features of the container, we held that it was specially shaped or fitted to hold articles associated with wallets and would fit comfortably into a handbag. Therefore, it was classifiable in subheading 4202.32, HTSUS.

Moreover, in determining that the article was not classifiable as a handbag, we discussed the term "handbag" stating that it "applies generally to containers which are suitable for carrying and holding a variety of small personal effects." The style in HRL 956241 was deemed not large enough to accommodate items normally carried in a handbag, such as a hairbrush, cosmetics or a set of keys on a chain. Furthermore, although the carrying strap suggested that the container would **actually** be used in a manner consistent with a handbag, we were of the opinion that the strap in and of itself should not affect its classification. We concluded that absent the strap containers such as those would not be **principally used as handbags**. See Additional U.S. Rule of Interpretation 1(a). Therefore, as stated above, the container was more accurately described as an article of a kind normally carried in the pocket or handbag.

Similarly, in the instant case, we conclude that the term "wallet" most specifically describes the four styles of containers. The container styles at issue here are also specially shaped or fitted to hold articles associated with wallets, such as paper currency, credit cards, coins and identification cards. In addition, based on their sizes, they will also fit com-

fortably in a handbag. We also note that these containers are not large enough to accommodate items normally carried in a handbag. Finally, as with the container in HRL 956241, the presence of the strap does not affect the classification of these containers. In fact, as the straps on the instant containers are removable, there is an even stronger argument that these containers will not be **principally used as handbags. See,** HRL 082265, dated March 20, 1989, where in classifying a ski wallet with a textile braided neck strap, we held that, though the ski wallet was intended to be worn around the neck for the convenience of the skier, it was an article of a kind that would normally be carried in the pocket or handbag. Accordingly, the ski wallet was classified in heading 4202, HTSUS; HRL 083992, dated April 24, 1992, which classified a nylon neck pouch designed to be worn around the neck by means of a braided textile cord and HRL 088145, dated February 26, 1991, which classified a neck money belt attached to a small cord dropped over the neck, wherein we held that though the items clearly were designed to be worn around the neck, they were nonetheless classifiable in heading 4202, HTSUS, as articles of a kind normally carried in the pocket or handbag. Thus, the subject containers are classifiable as "articles of a kind normally carried in the pocket or in the handbag" in subheading 4202.32, HTSUS.

Holding:

Style nos. 870492, 870538, 17602 and 170034 are classified in subheading 4202.32.1000, HTSUS, which provides for "[t]runks, suitcases * * *; traveling bags, toiletry bags, knapsacks and backpacks, handbags * * *: [a]rticles of a kind normally carried in the pocket or in the handbag: [w]ith outer surface of sheeting of plastic or of textile materials: [w]ith outer surface of sheeting of plastic: [o]f reinforced or laminated plastics." The rate of duty is 12.1 cent/kg + 4.6% *ad valorem*.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

In order to ensure uniformity in Customs classification of this merchandise and eliminate uncertainty, pursuant to section 177.9(d)(1), Customs Regulations (19 CFR 177.9(d)(1)), PCs 887252 and 890021 are partially modified to reflect the above classification effective with the date of this letter. For purposes of future transactions concerning these styles, PCs 887252 and 890021 will not be valid precedent.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 22, 1994.

CLA–2 CO:R:C:T 956241 ch
Category: Classification
Tariff No. 4202.32.4000

L. KLESTADT
TRANS-WORLD SHIPPING CORPORATION
53 Park Place
New York, NY 10007

Re: Classification of a cotton denim container with shoulder strap from Taiwan; wallet; article of a kind normally carried in the pocket or in the handbag; not a handbag.

DEAR MR. KLESTADT:

This is in response to your letter of March 8, 1994, on behalf of Bijoux International, Incorporated, requesting tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for a cotton denim container from Taiwan. A sample was provided to this office for examination.

Facts:

The submitted sample, style 535332, is a cotton denim container with shoulder strap. The container is tri-fold in design. It measures approximately 6 inches by 5½ inches when

closed and 13½ by 5½ inches when open. The article is secured by means of a hook and loop fastener. The fitted interior includes four credit card slots, an identification card slot with window, a vinyl lined zippered compartment measuring approximately 3½ inches by 5½ inches and a vinyl lined zippered compartment measuring approximately 9 inches which is suitable for holding paper currency. The exterior possesses a vinyl lined zippered compartment measuring approximately 2½ inches by 4½ inches. It also features the legend "Arizona Jean Co."

Issue:

What is the proper tariff classification for the instant container?

Law and Analysis:

Heading 4202, HTSUSA, provides *inter alia* for handbags and wallets. Subheading 4202.22, HTSUSA, encompasses handbags, whether or not with shoulder strap, with outer surface of textile materials. Subheading 4202.32, HTSUSA, includes articles of a kind normally carried in the pocket or handbag, with outer surface of textile materials. The subheading Explanatory Note to heading 4202, at page 613, indicates that wallets are classified within subheading 4202.32. Pursuant to General Rule of Interpretation 6, classification of goods at the subheading level shall be effected *mutatis mutandis* with General Rules of Interpretation 1 through 5.

The term "wallet" is not defined in the HTSUSA or in the applicable Explanatory Note to heading 4202, HTSUSA. However, we note the following definitions of the term "wallet" from lexicographic sources:

> *Essential Terms of Fashion: A Collection of Definitions,* Charlotte M. Calasibetta, Fairchild Publications, 1986: An item used to carry paper money, credit cards, photographs and sometimes with a change purse or space for a check book or pad.
>
> *The Fashion Dictionary,* Mary Brooks Picken, Funk & Wagnalls, 1973: 1. Flat purse or pocketbook, for carrying either paper money or coins.
>
> *Webster's New-Collegiate Dictionary,* G. & C. Merriam Co., 1977: 1. a bag for carrying miscellaneous articles while traveling; 2 a: billfold b: a pocketbook with compartments for change, photographs, cards, and keys.
>
> *Webster's New World Dictionary, Third College Edition,* Simon & Schuster, Inc., 1988: 1. (Archaic] a knapsack; 2. a flat pocketbook, as of leather, with compartments for paper money, cards, etc.; billfold.

Style 535332 is flat and features compartments specially shaped and fitted to hold such items as paper currency, credit cards, and change. Hence, it is *prima facie* classifiable as a wallet.

We also recognize that the term "handbag" has been defined as follows:

> *Essential Terms of Fashion: A Collection of Definitions:* Accessory carried primarily by women and girls to hold such items as money, credit cards, and cosmetics.
>
> *The Fashion Dictionary:* Soft or rigid bag carried in hand or on arm. Size, shape, handle, etc., depend on fashion. Used by women as container for money and pocket-sized accessories.
>
> *Webster's New Collegiate Dictionary:* 1. traveling bag; 2. a woman's bag held in the hand or hung from a shoulder strap and used for carrying small personal articles and money.
>
> *Webster's New World Dictionary:* A bag, usually of leather or cloth, held in the hand or hung by a strap from the arm or shoulder and used, by women, to carry money, keys, and personal effects.

In this case, the article in question features a shoulder strap and is designed to carry money, credit cards and other very small personal effects. Hence, it appears to be *prima facie* classifiable as a handbag.

As style 535332 is described by two subheadings within heading 4202, HTSUSA, we must resort to General Rule of Interpretation 3 to determine its proper classification. General Rule of Interpretation 3(a) states that "the heading which provides the most specific description shall be preferred to headings providing a more general description." We conclude that the term "wallet" most specifically describes the instant article. Wallets are usually specially shaped or fitted to hold articles such as paper currency, credit cards, coins and identification cards. Furthermore, subheading 4202.32, HTSUSA, provides for "articles of a kind normally carried in the pocket or in the handbag," which implies that wallets must be small enough for this purpose. The container in this case is specially shaped or fitted to hold articles associated with wallets and will fit comfortably into a handbag.

On the other hand, the term "handbag" applies generally to containers which are suitable for carrying and holding a variety of small personal effects. Style 535332 is not large enough to accommodate items normally carried in a handbag, such as a hairbrush, cosmetics or a set of keys on a chain. Although the carrying strap suggests that it will **actually** be used in a manner consistent with a handbag, we are of the opinion that the strap in and of itself should not affect its classification. We conclude that absent the strap containers such as style 535332 will not be **principally used as handbags.** *See* Additional U.S. Rule of Interpretation 1(a). Rather, they are more accurately described as articles of a kind normally carried in the pocket or in the handbag.

Holding:

The subject merchandise is classifiable under subheading 4202.32.4000, HTSUSA, which provides *inter alia* for wallets: articles of a kind normally carried in the pocket or in the handbag: with outer surface of textile materials: of vegetable fibers and not of pile or tufted construction: of cotton. The applicable rate of duty is 7.2 percent *ad valorem*. The textile quota category is 369.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are the subject of frequent negotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

HUBBARD VOLENICK,
(for John Durant, Director,
Commercial Rulings Division.)

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 95–98)

AMERICAN ALLOYS, INC., ELKEM METALS CO., GLOBE METALLURGICAL, INC., SIMETCO, INC., AND SKW ALLOYS, INC., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Court No. 91–10–00782

(Dated May 30, 1995)

JUDGMENT

CARMAN, *Judge:* Upon consideration of the joint motion of Plaintiffs American Alloys, Inc., Elkem Metals Company, Globe Metallurgical, Inc., SiMETCO, Inc., and SKW Alloys, Inc. and Defendant the United States of America to affirm by consent the remand determination of the United States Department of Commerce pursuant to the remand order of the Court in the above-captioned action, and all other papers and proceedings herein, it is hereby

ORDERED, ADJUDGED, and DECREED that the jont motion be, and hereby is, granted, and that the remand determination of the United States Department of Commerce filed with the Court on April 10, 1995 is affirmed; and it is further

ORDERED, ADJUDGED, and DECREED that this case is dismissed.

(Slip Op. 95–99)

UNITED STATES, PLAINTIFF *v.* CHERRY HILL TEXTILES, INC., AND INTERNATIONAL CARGO AND SURETY INSURANCE CO., DEFENDANTS

INTERNATIONAL CARGO AND SURETY INSURANCE CO., CROSS-PLAINTIFF *v.* CHERRY HILL TEXTILES, INC., CROSS-DEFENDANT

Court No. 94–09–00534

[Plaintiff's motion for summary judgment granted; defendant's motions for oral argument and an evidentiary hearing on its motion to strike denied.]

(Decided May 30, 1995)

Frank W. Hunger, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, Department of Justice (*Barbara Silver Williams*, Esq.); *Ted Kundrat*, Esq., United States Customs Service, for plaintiff

Hodes & Pilon (*Wayne Jarvis* and *Michael G. Hodes*, Esqs.), for defendant International Cargo and Surety Insurance Company.

OPINION AND ORDER

INTRODUCTION

NEWMAN, *Senior Judge:* The government brings this collection action for recovery of unpaid customs duties in the sum of $12,220.62, plus interest, against Cherry Hill Textiles, Inc. ("Cherry Hill"), importer of record of certain dyeing machines entered duty free through the port of Newark on September 18, 1987, and International Cargo and Surety Insurance Company ("Intercargo"), the surety on the importer's entry bond. Intercargo has filed a cross-claim against its co-defendant, Cherry Hill, to recover indemnification for any sums awarded to plaintiff. Jurisdiction in this type of action is predicated on 28 U.S.C. §§ 1582(2) and 1582(3).

Currently before the court is the government's motion for summary judgment under CIT Rule 56 against the surety. Intercargo opposes the motion raising certain affirmative defenses set forth in the answer, addressed *infra*, and on the ground there are genuine issues of material fact for trial. Further, Intercargo moves for oral argument on the government's motion, demands a jury trial in accordance with CIT Rule 38, and moves for an evidentiary hearing on its motion to strike a declaration proffered by plaintiff in support of its motion for summary judgment.

For the reasons that follow, plaintiff's motion for summary judgment is granted; defendant's motions for oral argument and evidentiary hearing are denied.

There can be no genuine issue as to the following material facts: Cherry Hill entered the dyeing machines at Newark, New Jersey as duty free on September 18, 1987 under Entry No. F23 0005237–0. Approximately thirteen months thereafter, on October 28, 1988, Cus-

toms liquidated the entry as dutiable in the sum of $12,220.62. The government demanded payment of duties from Intercargo under its bond, which payment was refused. However, Intercargo protested neither the liquidation nor demand for payment, as it had a right to do in conformance with 19 U.S.C. § 1514(a).

PARTIES' CONTENTIONS

Intercargo denies liability for duties under its entry bond asserting that such liability would have been discharged one year from the date of entry—September 18, 1988—on which date the entry was "deemed liquidated" in accordance with 19 U.S.C. § 1504(a) "at the rate of duty, value, quantity, and amount of duties asserted at the time of entry." As noted *supra*, the merchandise was entered by Cherry Hill as duty-free.

Revolving around its "deemed liquidation" contention, Intercargo interposes three interrelated affirmative defenses: First, under § 1514(a) the deemed liquidation is "final and conclusive" upon the government, and therefore, precludes the government's claim for duty liability predicated on the subsequent liquidation of October 28, 1988.

Second, an entry cannot lawfully be "liquidated" following a deemed liquidation, and hence, the government's so-called "liquidation" of October 28, 1988 is null and void.

Third, on October 28, 1988 the government in fact unlawfully reliquidated the "deemed liquidation," and similarly such reliquidation is null and void.

Finally, relative to summary judgment, Intercargo insists that in any event there are numerous genuine material issues of fact for trial, and consequently, the government's motion must be denied and this action proceed to a trial by jury, as demanded.

Citing *United States v. Utex International, Inc.*, 857 F. 2d 1408 (Fed. Cir. 1988); *Omni U.S.A. v. United States*, 840 F. 2d 912, 913 (Fed. Cir. 1988), *cert. denied*, 488 U.S. 817 (1988); *United States v. A.N. Deringer*, 66 CCPA 50, 55, 593 F. 2d 1015 (1979), *SCA Int'l. Inc. v. United States*, 14 CIT 59 (1990), *Computime, Inc. v. United States*, 9 CIT 553, 557, 622 F. Supp. 1083 (1985), *Juice Farms, Inc. v. United States*, ____, CIT ____, Slip Op. 94–172 (Nov. 9, 1994), *appeal docketed*, CAFC Dec. 8, 1994, and *Mitsubishi Electronics America, Inc. v. United States*, ____, CIT ____, Slip Op. 94–155 at 7 (Oct. 3, 1994), the government maintains, correctly, that even if the October 28, 1988 liquidation is illegal, because the period in which to liquidate the entry was not timely suspended or extended, such liquidation is not void, but merely voidable;[1] that pursuant to § 1514 even a voidable liquidation is "final and conclusive" unless contested by a timely protest; that Intercargo's failure to file at the administrative level a protest against either the liquidation or the demand for payment under its bond leaves the liquidation of October 28, 1988 final and conclusive against the surety precluding judicial

[1] As to whether the liquidation of October 28, 1988—more than one year after the date of entry—may have been improper, *see Pagoda Trading Corp. v. United States*, 804 F. 2d 665 (Fed. Cir. 1986), *Detroit Zoological Soc'y v. United States*, 10 CIT 133, 630 F. Supp. 1350 (1986).

review of Intercargo's affirmative defenses; and that Intercargo's failure to file a protest constitutes a waiver of all claims or defenses that could have been raised by protest and administratively reviewed by Customs concerning the liquidation prior to the commencement of this collection action against the surety.

Finally, the government vigorously disputes plaintiff's contention there are genuine issues of material fact for trial, and urges that since Intercargo's affirmative defenses are barred from judicial review, the government is, as a matter of law, entitled to a judgment for unpaid duties plus interest on Intercargo's bond and summary judgment therefore must be entered for the government.

In response to the government's position that Intercargo's affirmative defenses to liability are now precluded by its failure to file a timely protest, Intercargo counters: the "final and conclusive" provision in § 1514 is inoperative in a collection action by the government under § 1582; and to apply that provision to a surety in the manner sought by the government would deprive Intercargo of its right to a trial *de novo,* and its Constitutional guarantees of equal protection and a jury trial under the Fifth and Seventh Amendments respectively.

DISCUSSION

I

This action raises the significant legal issue of whether a defendant surety in an action brought by the government under § 1582 may, as an affirmative defense to duty liability under its bond, collaterally challenge the legality of a liquidation, which by the terms of § 1514 is "final and conclusive" as to all persons if not timely protested, where the surety failed to file such protest.

It is beyond contravention that under the express terms of § 1514, a liquidation or reliquidation is "final and conclusive" against all persons, including a surety on an entry bond, unless timely protested.[2] *See Utex International, Inc., supra; A.N. Deringer, supra; American Motorists Ins. Co. v. United States,* 737 F. Supp. 648, 649 (CIT 1990); *Mitsubishi Electronics America, Inc., supra; Juice Farms, Inc., supra; United States v. Ataka America, Inc.,* 17 CIT ____, 826 F. Supp. 495 (1993); *SCA Int'l Inc., supra; Washington Int'l Co. v. United States* 13 CIT 112, 707 F. Supp. 561 (1989); *Computime, Inc. v. United States,* 8 CIT 259, 601 F. Supp. 1029 (1984), *aff'd,* 772 F.2d 874 (1985); and *Schmitt & Co. v. United States,* 71 Cust. Ct. 194, 371 F. Supp. 1079 (1973).

The "final and conclusive" provision in § 1514 is not applicable only in civil actions brought by an importer against the government, as mistakenly argued by Intercargo. It is a well-settled maxim that "[i]n a statutory construction case, the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary

[2] Hereinafter, the term "liquidation" shall be used to include a "reliquidation" since under § 1514 both are "final and conclusive" unless a timely protest is filed.

circumstances, is finished." *Estate of Cowart v. Nicklos Drilling Co.*, 112 Sup. Ct. 2589, 2594 (1992). Thus, by the plain language of the statute, the term "final and conclusive" does not have the restricted application claimed by Intercargo. Hence, the finality and conclusiveness of an unprotested liquidation may be invoked by the government *defensively* in an action brought by the importer or surety under § 1581(a), or as here, by the government *offensively* in a collection action under § 1582(2) to preclude the court from adjudicating the legality of an unprotested (and therefore administratively unreviewed) liquidation or other Customs decision.

Under Intercargo's theory, a surety who has filed no protest, or an untimely protest, against a liquidation, which liquidation by the terms of § 1514(a) has becomes final and conclusive, may simply wait for the government to bring a collection action under § 1582(2) and then collaterally challenge the liquidation in the collection action. Clearly, the concept of an unprotested liquidation which by the express terms of the statute has become final and conclusive on both the importer and the government, but still remains fully subject to challenge and judicial review if the government brings a collection action under § 1582(2) would indeed be anomalous and make a mockery of congressional intent in § 1514.

II

The court next addresses the legislative intent in granting the CIT jurisdiction over collection actions by the government under § 1582 as such intent bears on the present issue. Specifically, the government directs the court's attention to the expressed Congressional intent to preclude importers or their sureties who are defendants in collection suits from bypassing administrative review of protestable decisions by challenging such decisions in response to § 1582 actions brought against them by the government.

Under the Customs Courts Act of 1980, P.L.96–417, Congress transferred exclusive jurisdiction over customs-related collections instituted by the United States from the United States District Courts to the newly formed United States Court of International Trade. 28 U.S.C. § 1582. The purpose of the transfer of jurisdiction and scope of judicial review of Customs's decisions is addressed in the House Report prepared by the Committee on the Judiciary, H.R. 1235, 96th Cong. 2d Sess. 49 (August 20, 1980):

> Jurisdiction over this type of civil action presently lies in the federal district courts. However, since each of these actions present questions which involve the expertise of the court, e.g. questions concerning classification, valuation or markings, the Committee believes exclusive jurisdiction over these actions should lie in the United States Court of International Trade.
>
> Paragraphs (2) and (3) of proposed section 1582 provide jurisdiction for the Court of International Trade to hear collections cases, i.e., recoveries on a bond or recoveries of customs duties. The Committee intends that these actions proceed in the same manner as they have in the district courts.

> *The Committee does not intend for importers to withhold payment of their assessed duties and then await suit by the Government in order to challenge the underlying administrative decision by the Customs official as to classification or valuation through the use of a counterclaim pursuant to proposed section 1583.* Under H.R. 7540, the filing and denial of a protest will continue to be prerequisites to the commencement of a civil action traditionally brought by an importer, as will payment of all liquidated duties, charges and exactions, except as provided in this legislation. *The bill is not intended to make a major change in the requirement that an importer exhaust all administrative remedies prior to commencement of a civil action in the Court of International Trade,* except as provided for by proposed section 2637(b).

H.R. Rep No. 1235, 96th Cong. 2d Sess. 49 (Aug. 20, 1980) (emphasis added).

Buttressing the government's position that Intercargo's affirmative defenses contesting the liquidation are now precluded in this suit because Intercargo failed to file a protest against such liquidation is that Congress made clear its intent that judicial review of protestable decisions in § 1582 actions still requires exhaustion of administrative remedies as a prerequisite and that challenge to such decisions cannot be made by counterclaim. Since Congress intended that a counterclaim challenging a protestable decision under § 1514(a) not be available to the importer in a § 1582 action in order to evade administrative review, *a fortiori,* affirmative defenses such as those asserted by Intercargo challenging the liquidation may not be used to the same effect. Plainly, a surety having a potential liability under its bond for unpaid duties would have little incentive to formally initiate by protest administrative proceedings challenging a liquidation and pay the duties up front if the surety could simply await a § 1582 action and then contest the liquidation as an affirmative defense. Clearly, Congress did not intend that the § 1582 collection suit should serve as an alternative vehicle for importers or their sureties to litigate the full panoply of Customs' decisions involved in classification, appraised value, or as here the liquidation, which decisions Congress expressly made final and conclusive unless timely protested.

As exemplified by the very precedents relied on by Intercargo and discussed *infra,* only in cases involving an administrative decision or demand outside the parameters of a liquidation or other protestable administrative decision enumerated under § 1514 can a surety, without having filed an administrative protest, contest and obtain judicial review of the administrative decision or demand. Hence, not only are the factual and legal settings in the precedents cited by Intercargo quite distinguishable from those in the current action, the underlying rationale of the decisions actually buttresses the government's, not Intercargo's, position.

Thus, in *United States v. Utex Int'l Inc.,* 857 F.2d 1408 (Fed. Cir. 1988)), a collection action by the government against a surety to

recover liquidated *damages*—not liquidated *duties*—the government, relying on § 1514, unsuccessfully argued that the surety was precluded from contesting Customs' demand for payment of liquidated damages because the surety had failed to file a protest against the demand for payment. The Federal Circuit observed that while § 1514 requires exhaustion of administrative remedies—filing and denial of a protest—as a prerequisite to judicial review of a liquidation or any decision subsumed in liquidation, the surety was not required to file a protest as a prerequisite to its right to defend against the government's claim for liquidated damages.

Although the *Utex* court held that the finality of a liquidation absent a timely protest did not apply to judicial review of a demand for liquidated damages, *Utex* is quite clear that unprotested liquidated duties and all decisions subsumed in the liquidation are final and conclusive and not subject to judicial review. Therefore, *Utex* fully supports the government's argument that Intercargo is now barred from challenging the October 28, 1988 liquidation.

United States v. Sherman & Sons Co., 237 U.S. 146 (1915), also heavily relied on by defendant, was an *in personam* collection suit by the government against the importer for recovery of duties. The Collector of Customs reliquidated the entry with increased duties more than four years after the original assessment charging the importer with fraud when making the entry. The importer filed no protest against the reliquidation and the issue before the Supreme Court was whether such reliquidation for fraud was contestable by the importer in the government's collection suit, or was final and conclusive against the importer since no protest had been filed against the reliquidation.

The Court, citing the particular language of the 1874 Tariff Act, held that absent a protest, the reliquidation was indeed final and conclusive on the importer, but only as to the amount of duties. The 1874 statute, according to the Court, permitted the collector's finding of fraud, the ground upon which the entry was reliquidated, to be judicially contested and reviewed notwithstanding no protest was filed.

The rationale of *Sherman* was based on the specific statutory language of the Tariff Act of 1874 making the reliquidation final and conclusive only with regard to the rate and amount of duties, but not with regard to the finding of fraud, which finding was *outside the parameters of those administrative decisions of the collector made final and conclusive by the statute if no protest was filed.*

Extrapolating the rationale of *Sherman*—that in a suit on an unprotested reliquidation for fraud, the rate or amount of duties was uncontestable by the importer *because such rate and amount fell within the final and conclusive language of the 1874 statute*—to the issue in the current case, the government's position appears correct. Under § 1514, liquidation, including the rate and amount of duties, is encompassed by the final and conclusive provision of the statute.

In *St. Paul Fire & Marine Ins. Co. v. United States*, 959 F.2d 960 (1992) the surety, St. Paul, paid the importer's duties on demand by the government under the entry bond and then filed an action contesting the denial of the importer's protests against classification of the merchandise by Customs and seeking a refund of the duties paid on behalf of the importer. After commencing its action challenging the classification of the merchandise and after the expiration of time for protesting Customs' demand for payment under the bond, St. Paul discovered information relevant to discharge of its liability under its bond. St. Paul thereupon moved to amend its complaint to assert counts alleging contractual breaches of duty by the government to the surety under the bond. The CIT, however, denied St. Paul's motion to amend the complaint reasoning that since St. Paul had failed to protest the government's demand for payment under the bond, the court lacked jurisdiction over the new counts alleging contractual breaches of duty sought to be asserted by amendment of St. Paul's complaint.

The Federal Circuit reversed, holding that St. Paul's proposed breach of contract counts against the government were not barred by the surety's failure to file a timely protest. The Federal Circuit observed that the basis for St. Paul's contractual claims was not discovered, hence did not accrue, within the statutory time-frame for protesting Customs' demand for payment, and therefore, such contractual defenses could have been asserted by St. Paul had it had been sued on its bond by the government. Significantly, too, the Federal Circuit reasoned that St. Paul's contractual claims, even had they accrued prior to liquidation, would not have been subsumed by the liquidation, were personal to the surety, and therefore, the CIT had residual jurisdiction of the contractual claims under 28 U.S.C. § 1581(i).

Here, by contrast, Intercargo's affirmative defenses contest the liquidation which could have been timely protested, and raise no contractual claim against the government personal to the surety or relevant to a breach of the government's obligations under the bond. Clearly, then, the rationale of *St. Paul* gives no solace to Intercargo, but rather supports the government's contention.

III

Intercargo further argues that if its affirmative defenses challenging the liquidation are now held to be irreparably prejudiced because no protest was filed and denied pursuant to §§ 1514 and 1515, Intercargo would be deprived of its right as a defendant in a § 1582 action to a judicial determination of all its defenses in a trial *de novo, i.e.*, on the record made before the court, pursuant to 28 U.S.C. § 2640(a)(6). That contention is without merit. The right to *de novo* judicial review subsumes exhaustion of the administrative remedies, and simply assures a judicial determination based on the record made before the court rather than the administrative record.

It is too obvious to warrant extended discussion that a civil action initiated by an importer or surety under 28 U.S.C. § 1581(a) to contest a

liquidation, which is also tried *de novo* pursuant to § 2640(a), requires exhaustion of the administrative remedies in conformity with §§ 1514 and 1515. Similarly, Intercargo's right to *de novo* review of the legality of the liquidation requires the exhaustion of the administrative remedy under §§ 1514 and 1515 as a prerequisite to such review.

IV

Intercargo also argues that if its affirmative defenses challenging the legality of the liquidation are now precluded because the unprotested liquidation is now final and conclusive, Intercargo would be unconstitutionally deprived of its right to a jury trial of its defenses in violation of the Seventh Amendment. The court disagrees. In *Auffmordt v. Hedden,* 137 U.S. 679 (1890), the importer sued the Collector to recover allegedly excessive duties paid under protest. Significantly, the Supreme Court flatly rejected the importer's claim that the finality and conclusiveness of the appraised values of the merchandise (upon which the assessment of duties was predicated), in accordance with the statute then in effect, deprived the importer of its constitutional right to a jury trial on the valuation issue. The Court held that the government "has the right to prescribe the conditions on which it will subject itself to the judgment of the courts in the collection of its revenues," quoting *Cheatham v. United States,* 92 U.S. 85, 89 (1876). A *fortiori,* the finality and conclusiveness of the liquidation now sought to be challenged by Intercargo, absent the filing of a timely protest, does not unconstitutionally deprive Intercargo of its right to a jury trial, as the government "has the right to prescribe the conditions on which it will subject itself to the judgment of the courts." *Id.*

The government does not dispute Intercargo's contention that in a suit against the surety under § 1582, the surety has a constitutional right to a jury trial on issues of fact. However, a surety's constitutional guarantee of a jury trial in such collection suit does not carry with it an unconditional right to raise the legality of the liquidation as a defense to duty liability. Any right to contest the liquidation and assessment of duties is, of course, purely a creature of statute, and may be statutorily circumscribed by, *inter alia,* exhaustion of the protest procedure prescribed by § 1514 without violation of the Seventh Amendment. A statutory prerequisite of exhaustion of an administrative remedy does not violate the Seventh Amendment's guarantee of a trial by jury. *See Linder v. Smith,* 193 Mont. 20, 629 P.2d 1187 (1981) (mandatory submission of medical malpractice claims to screening panel as prerequisite to right to a jury trial does not violate Seventh Amendment since right to jury trial is preserved regardless of decision of screening panel); *Kimbrough v. Holiday Inn,* 478 F. Supp. 566 (DC Pa. 1979) (compulsory nonbinding arbitration as prerequisite to judicial proceedings does not violate right to trial by jury as guaranteed by Seventh Amendment); and *Davidson v. Sinai Hospital of Baltimore, Inc.,* 462 F. Supp. 778 (DC Md. 1978), *aff'd* 617 F.2d 361 (1980) (mandatory arbitration of medical malpractice claims as prerequisite to right to trial by jury is not uncon-

stitutional notwithstanding that statute made findings of arbitrators presumptively correct).

V

Intercargo's further constitutional argument that the final and conclusive language of § 1514, as it is sought to be applied by the government in this case, deprives a surety of the equal protection of the laws in violation of the Fifth Amendment is also without merit. The final and conclusive provision in § 1514 expressly applies to all persons, including the government, and Intercargo was not precluded from filing a timely protest challenging the liquidation or demand for payment under its bond, thus avoiding the finality of the liquidation, and thus protecting its right to judicial review of the legality of the liquidation.

VI

Finally, the court addresses Intercargo's contention that summary judgment should be denied as there are numerous issues of material fact. As noted above, the court has concluded that Intercargo's affirmative defenses challenging the October 28, 1988 liquidation are, as matter of law, barred from judicial review in this action. The preclusion of Intercargo's affirmative defenses challenging the legality of the liquidation and assessment of duties leaves no genuine issue of material fact for trial relating to Intercargo's liability under its bond for Cherry Hill's unpaid duties. Accordingly, the court need not reach Intercargo's motions to strike and for an evidentiary hearing regarding the Declaration of Ronald Busch, an accountant at the Customs National Finance Center, Indianapolis, Indiana concerning Customs' liquidation, duty assessment and collection procedures and the document authentication and evidentiary foundation issues raised by Intercargo.

CONCLUSION

In conformance with conclusions reached, the government's motion for a summary judgment is granted in the amount of $12,220.62 plus accrued pre- and post-statutory interest. Of course, before final judgment may be entered in this action, Intercargo's cross-claim against Cherry Hill for contractual indemnification under the bond remains for disposition.

Finally, the court finds that the parties' exhaustive briefing and analysis of the relevant legal issues and precedents adequately present their positions and in the interest of judicial economy Intercargo's request for oral argument is denied.

(Slip Op. 95–100)

ZENITH ELECTRONICS CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 90–07–00339

(Dated May 31, 1995)

JUDGMENT

RESTANI, *Judge*: As the United States Department of Commerce has complied with the court's decisions as reflected in Slip Ops. 94–148 and 95–46, and there being no further objections, the remand determination of the Department of Commerce of April 14, 1995 is hereby affirmed. The reasoning of the aforementioned slip opinions is incorporated here by reference.

(Slip Op. 95–101)

SAMSUNG ELECTRONICS CO., LTD., ET AL., PLAINTIFFS *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 91–04–00327

(Dated May 31, 1995)

JUDGMENT

RESTANI, *Judge:* As the United States Department of Commerce has complied with the court's decisions as reflected in Slip Ops. 94–149 and 95–48, and there being no further objections, the remand determination of the Department of Commerce of April 14, 1995 is hereby affirmed. The reasoning of the aforementioned slip opinions is incorporated here by reference.

(Slip Op. 95–102)

SIGMA CORP., U.V. INTERNATIONAL, SOUTHERN STAR, INC., CITY PIPE AND FOUNDRY, INC., LONG BEACH IRON WORKS, OVERSEAS TRADE CORP., D & L SUPPLY CO., DEETER FOUNDRY, INC., ALHAMBRA FOUNDRY, INC., ALLEGHENY FOUNDRY, CO., BINGHAM & TAYLOR DIV., VIRGINIA INDUSTRIES INC., CAMPBELL FOUNDRY CO., CHARLOTTE PIPE & FOUNDRY CO., EAST JORDAN IRON WORKS, INC., LEBARON FOUNDRY INC., MUNICIPAL CASTINGS, INC., NEENAH FOUNDRY CO., OPELIKA FOUNDRY CO., INC., PINKERTON FOUNDRY INC., TYLER PIPE INDUSTRIES INC., U.S. FOUNDRY & MANUFACTURING CO., AND VULCAN FOUNDRY, INC., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND D & L SUPPLY CO., DEFENDANT-INTERVENOR, AND DEETER FOUNDRY, INC., ET AL., DEFENDANT-INTERVENORS

Consolidated Court No. 91–02–00154

Plaintiff and defendant-intervenors challenge the Department of Commerce, International Trade Administration's ("Commerce") redetermination on remand filed in this case, claiming it was not in accordance with law and unsupported by substantial evidence.

Held: This case is further remanded for Commerce to correct the error committed in calculating skilled labor costs of lathe operators, namely, for Commerce to multiply the machining time per metric ton by the production in metric tons of each foundry. In all other respects, Commerce acted in accordance with law and was supported by substantial evidence and this case is dismissed.

[Case remanded and dismissed.]

(Dated June 1, 1995)

White & Case (Walter J. Spak and *Vincent Bowen)* for plaintiffs Sigma Corporation, U.V. International, Southern Star, Inc., City Pipe and Foundry, Inc. and Long Beach Iron Works.

Ross & Hardies (Jeffrey S. Neeley) for plaintiff Overseas Trade Corporation.

Cameron & Hornbostel (Dennis James, Jr.) for plaintiff and defendant-intervenor D & L Supply Company.

Collier, Shannon, Rill & Scott (Paul C. Rosenthal, Mary T. Staley and *Robin H. Gilbert)* for plaintiffs and defendant-intervenors Deeter Foundry, Inc., Alhambra Foundry, Inc., Allegheny Foundry Co., Bingham & Taylor Division, Virginia Industries, Inc., Campbell Foundry Co., Charlotte Pipe & Foundry Co., East Jordan Iron Works, Inc., LeBaron Foundry Inc., Municipal Castings, Inc., Neenah Foundry Co., Opelika Foundry Co., Inc., Pinkerton Foundry, Inc., Tyler Pipe Industries, Inc., Vulcan Foundry, Inc. and U.S. Foundry & Manufacturing Co.

Frank W. Hunger, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Velta A. Melnbrencis* and *Paul Herrup);* of counsel: *Jeffery C. Lowe* and *Robert J. Heilferty,* Attorney-Advisors, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

OPINION

TSOUCALAS, *Judge:* Plaintiff D & L Supply Company ("D & L" or "plaintiff") and defendant-intervenors U.S. Foundry & Manufacturing Co., Alhambra Foundry, Inc., Allegheny Foundry Co., Bingham & Taylor Division, Virginia Industries, Inc., Charlotte Pipe & Foundry Co., Deeter Foundry Inc., East Jordan Iron Works, Inc., LeBaron Foundry Inc., Municipal Castings, Inc., Neenah Foundry Co., Opelika Foundry Co., Inc., Tyler Pipe Industries, Inc., Vulcan Foundry, Inc., Campbell

Foundry Co. and Pinkerton Foundry Inc. ("defendant-intervenors" or "domestic industry") challenge as unsupported by substantial evidence and not in accordance with law the Department of Commerce, International Trade Administration's ("Commerce") redetermination on remand filed in this case, *Iron Construction Castings from the People's Republic of China: Final Results of Redetermination Pursuant to Court Remand, Slip Op. 93–230 ("Remand Results")*. Specifically, D & L contests Commerce's refusal to give Guangdong Minmetals ("Guangdong") a separate antidumping rate, calculation of freight costs and calculation of labor costs for lathe operators. Defendant-intervenors contest Commerce's use of two different methodologies to value pig iron and raw material inputs, failure to add freight-in costs to additives and supplies cost, failure to include a separate amount for indirect material costs in its overhead calculations and failure to collect additional information to calculate Guangdong's depreciation expenses.

BACKGROUND

In *Sigma Corp. et al. v. United States*, 17 CIT ____, 841 F. Supp. 1255 (1993), the Court remanded this case for Commerce to, *inter alia*, seek further information from Guangdong regarding its independence and if it is satisfied that Guangdong is an independent company, set up a company-specific rate for Guangdong and, if not, to continue to apply a country-wide rate to Guangdong; to recalculate the depreciation expenses using the information supplied by respondents; to clarify why it valued other indirect materials in the same manner as it did sand by using U.S. industry data and gather more information if necessary; to review or revise its decision regarding direct materials; to further investigate whether labor costs were skilled or unskilled; to reconsider the information submitted by petitioners regarding overhead costs, or to substantiate on the record why it should not; and to review its failure to include freight-in costs for procuring additives and supplies.

Commerce filed the Remand Results on June 8, 1994. Oral argument was held on November 22, 1994.

DISCUSSION

Commerce's final results filed pursuant to a remand will be sustained unless that determination is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (1988). Substantial evidence is "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938); *Alhambra Foundry Co. v. United States*, 12 CIT 343, 345, 685 F. Supp. 1252, 1255 (1988).

1. *Guangdong's Antidumping Rate:*

This Court remanded this issue for Commerce to gather further information from Guangdong regarding its independence during the period of review and, if Commerce is satisfied that Guangdong is an independent company, to set a company-specific antidumping duty rate

for Guangdong. If Commerce is not satisfied, then Commerce was to continue to apply the country-wide rate to Guangdong. *Sigma Corp.*, 17 CIT at ____, 841 F. Supp. at 1267.

Commerce had provided Guangdong with a questionnaire requesting evidence regarding its claim of independence from export sales and pricing. Guangdong responded on March 21, 1994. On remand, Commerce determined that Guangdong has not demonstrated a lack of government control and has, therefore, not met the requirements for receiving a separate rate. *Remand Results* at 3–8.

D & L, an importer of castings produced by Guangdong, argues this Court should instruct Commerce to revise the Remand Results to apply a separate rate to Guangdong. D & L asserts Guangdong has adequately rebutted the presumption of state control. D & L contends that, because Guangdong operates in a province of the People's Republic of China ("PRC") which has introduced market economics and is owned by that province, it is more likely to have been independent of central control than Minmet Beijing, a company from another province whose rates were combined with Guangdong's. Finally, because similar information was submitted in another review for which Commerce deemed Guangdong to be independent and granted Guangdong a separate rate, D & L asserts Guangdong should receive a separate rate for this review period as well. *Plaintiff D & L Supply Company's Comments on the Remand Results ("D & L's Brief")* at 1–7.

Commerce states it has acted properly, complying with this Court's order to provide Guangdong with an opportunity to place evidence on the record establishing the absence of *de jure* and *de facto* government control. Commerce argues Guangdong has failed to so demonstrate the absence of government control. *Response of Defendant United States of America to Plaintiff D & L Supply Company's Comments on the Remand Results ("Defendant's Brief")* at 1–8.

In evaluating whether substantial evidence supports Commerce's determination that Guangdong was not independent from government control, the exporter must affirmatively demonstrate "an absence of central government control, *both in law and in fact*, with respect to exports." *Sigma Corp.*, 17 CIT at ____, 841 F. Supp. at 1262 (emphasis added, citation omitted).

Evidence supporting *de jure* absence of central government control includes: (1) absence of restrictive stipulations on individual exporter's business and export licenses; (2) legislative enactments decentralizing control of companies; or (3) formal measures by the government decentralizing control of the companies. *De facto* absence of central government control should meet two prerequisites: (1) that each exporter set its own export prices independently of the government and other exporters; and (2) that each exporter keep the proceeds from its sales. *Id.* at ____, 841 F. Supp. at 1262–63.

Upon examination of the record, this Court finds that Guangdong has not met its burden of demonstrating an absence of government control.

Guangdong presented several documents to establish that it was not subject to *de jure* control, but the only law in place during the 1987–88 review, the General Code of the Civil Law of the PRC adopted April 12, 1986, does not confer independence on the branches of state-owned enterprises. *Remand Results* at 5. Accordingly, Commerce properly applied a country-wide rate to Guangdong for the 1987–88 review.

As to the 1988–89 review, Commerce did find that Guangdong was *de jure* absent of government control during that period because the laws and regulations cited by Guangdong indicate it had the status of a legal person, was legally independent in its business operations and was fully responsible for its management, property and accounting. *Remand Results* at 5–6. However, Guangdong failed to meet its burden of demonstrating *de facto* absence of central government control. Except for a certification from its parent corporation attesting that it acted independently during the period of review, Guangdong provided no evidence on the record establishing that it negotiated prices or sales with its customers or that it was actually responsible for its profits and losses. *Remand Results* at 7. Guangdong also provided copies of its business licenses (information which describes the scope of its business activities) but, like the certification from its parent corporation, the licenses do not demonstrate the lack of *de facto* government control for the 1988–89 review period. *Remand Results* at 8. Thus, Commerce properly applied a country-wide rate to Guangdong for the 1988–89 review.

Accordingly, this Court affirms Commerce's action on this issue.

2. *Freight Costs:*

This Court remanded this case to Commerce with instructions that it recalculate freight costs using the information on the record which was submitted by respondents, rather than the best information available used by Commerce which consisted of the weighted average of the freight costs from a number of market economies. *Sigma Corp.*, 17 CIT at ____, 841 F. Supp. at 1273.

On remand, Commerce calculated freight costs by adding the freight charges between the mine and the raw material foundry within the PRC to the CIF (cost, insurance and freight) value of raw materials imported into the Philippines, the market economy country Commerce used to establish foreign market value. Commerce valued the freight within the PRC using respondents' quantity and distance data and petitioners' trucking rates. *Remand Results* at 19–20.

D & L maintains these freight costs are overstated and should be revised by deleting Chinese inland freight from the calculations or, at a minimum, should be recalculated based on the distance from the port to the foundry. D & L asserts Commerce has used a distance for freight cost that is not in the record because Commerce should have used the dis-

tance between the mine and the place pig iron is made and not the distance between the mine and the "raw material foundry." Plaintiff states Commerce should not be adding this amount in the first place, as this cost is already included in the cost of pig iron purchased by the foundry and Commerce should not be considering the freight costs for iron ore. In addition, D & L argues Commerce has double counted freight and has improperly mixed PRC-produced pig iron freight costs with surrogate Philippine pig iron freight costs. *D & L's Brief* at 7–13.

Commerce states it properly recalculated freight costs in accordance with the Court's remand instructions using the actual distances in China for transportation of pig iron and other inputs. Commerce acknowledges that it previously failed to properly account for the freight charge of transporting the raw materials used in the production of the castings. Commerce asserts one reasonable method of doing so is to base the calculation upon the actual distances within China, the nonmarket economy country. *Defendant's Brief* at 8–13. Domestic industry supports Commerce's position. *Domestic Industry's Rebuttal to D & L's Comments on the Commerce Department's Remand Results ("Domestic Industry's Rebuttal")* at 1–5.

This Court agrees with Commerce and domestic industry. As the import statistics price (from the Philippines) for pig iron contained an unknown amount of freight (for transporting the input from the exporting countries to the dock in the surrogate country), Commerce has reasonably relied upon the actual distances in the PRC that the inputs were transported for calculating the additional freight charge. Were respondents operating in a market economy, they would be required to pay a market rate for moving the inputs the entire distance from the various sources to the castings factory, and Commerce would include that amount in any cost calculation of freight. Because this is a nonmarket economy case and Commerce must rely upon surrogate data, Commerce calculated a reasonable amount of freight using a freight rate based upon petitioners' data and the actual distances reported by the respondents in China.

This Court has recently upheld this methodology for calculating inland freight charges and sees no reason to deviate from that decision in the case at bar. *See Sigma Corp. et al. v. United States,* 19 CIT ____, ____, Slip Op. 95–95 at 8–10 (May 23, 1995). Accordingly, the Court hereby affirms Commerce on this issue.

3. *Labor Costs for Lathe Operators:*

On remand, Commerce recalculated Guangdong's labor costs in order to include the skilled labor cost of lathe operators. *Remand Results* at 15.

D & L states the calculation is incorrect. Plaintiff points out that Commerce multiplied the "machining time" per metric ton by 2204.6 to get "total manhours" for lathe operations. The figure 2204.6 is the number of pounds in a metric ton and has no other relevance to the calculation. Plaintiff states that what Commerce intended to do was multi-

ply the machining time per metric ton by the production quantities of Guangdong's foundries. D & L indicates that the correct calculation would be to take the machining time per metric ton and multiply that by the production (in metric tons) of each foundry. The result derived for each foundry would then be applied to that foundry. *D & L's Brief* at 13–14. Commerce agrees with D & L and requests a remand for correction of this error. *Defendant's Brief* at 13–14.

Accordingly, this Court remands this issue for correction of the error committed in calculating skilled labor costs of lathe operators, namely, for Commerce to multiply the machining time per metric ton by the production in metric tons of each foundry.

4. *Raw Materials:*

Commerce valued some of the raw material factors using Philippine import statistics while valuing other raw material factors using U.S. costs. The Court remanded this case for Commerce to clarify why it valued other indirect materials in the same manner as it did sand by using U.S. industry data and gather more information if necessary, and review or revise its decision regarding direct materials. *Sigma Corp.*, 17 CIT at ____, 841 F. Supp. at 1270–71.

On remand, Commerce determined it was not necessary to collect additional information on the individual components of indirect materials. Because of marked price discrepancies, Commerce concluded that valuation of the indirect materials with the import statistics data would lead to unreasonable results. Commerce relied upon the import statistics for valuing direct materials because the price discrepancies within the direct material import categories were less broad and did not dramatically affect average prices. *Remand Results* at 10–13.

Domestic industry argues Commerce should not use the Philippine import statistics to value the pig iron factor of production. Domestic industry takes issue with Commerce's decision to treat sand and pig iron differently, asserting the price discrepancies are the same for both and the import statistics for pig iron are not broken down by grades or prices. Defendant-intervenors assert Commerce should be instructed to find an alternative value for pig iron that reasonably represents the price of pig iron used by castings manufacturers and, in the absence of such information, to use best information otherwise available. *Domestic Industry's Comments on the Commerce Department's Remand Results ("Domestic Industry's Brief")* at 2–11.

Commerce asserts it provided adequate analysis and demonstrated its actions are in accordance with law and supported by substantial evidence. In sum, Commerce argues the record supports its findings. *Response of Defendant United States of America to the Domestic Industry's Comments on the Commerce Department Remand Results ("Commerce's Brief")* at 1–6.

This Court agrees. Commerce provided an extensive analysis of the record evidence available to value indirect and direct raw materials. Commerce properly treated pig iron and sand differently. The record

reveals broad discrepancies in the import statistics values for sand which were due to the fact that the statistics reflected two distinct categories of sand, blasting and foundry sand. The record also reveals that the more expensive blasting sand was not used in iron castings production. In contrast, Philippine import statistic values for pig iron do not exhibit price discrepancies that are as broad and, to the extent different grades of pig iron imported may not have been used to produce castings, such variations are accounted for by the averaging inherent in the prices reflected in import statistics. *Remand Results* at 10–13, 22–25.

This case is distinguishable from *Sigma Corp. et al,* 19 CIT at ____, Slip Op. 95–95 at 4–8, where domestic industry was able to show that Indian import statistics separated pig iron into two categories, only one of which is used to produce iron castings.

Finally, this Court has, in this case, already affirmed both the use of the Philippines as a surrogate country and the use of Philippine import statistics. *Sigma Corp.,* 17 CIT at ____, 841 F. Supp at 1259–61.

Accordingly, this Court affirms Commerce's action on this issue.

5. *Freight-in Costs:*

This Court remanded this case for Commerce to review its failure to include freight-in costs for procuring additives and supplies involved in calculating the raw material factors. *Sigma Corp.,* 17 CIT at ____, 841 F. Supp. at 1274.

On remand, Commerce considered whether freight-in costs were included in the figures provided by petitioners for additives and supplies. Commerce determined it is a generally accepted accounting practice to include all freight-in costs in the cost of raw materials entered into a company's inventory. Commerce stated it found no indication on the record that the prices used in petitioners' valuation of material costs did not include freight-in expense and, therefore, made no change to its calculation. *Remand Results* at 21.

Defendant-intervenors contend there are indeed indications on the record that the prices used in valuation of material costs did include freight-in expense. Domestic industry asserts petitioners separately included an amount for the freight-in expenses for these costs because their additives and supplies information did not include freight-in expenses. Domestic industry supports their contention by pointing out that, if freight costs had been included, petitioners would not have had a separate line item for freight-in expenses for additives and supplies in its submissions. *Domestic Industry's Brief* at 11–13.

Commerce asserts it properly determined that the value of additives and supplies provided by petitioners included freight-in costs, thus precluding the addition of a further amount. Commerce states petitioners' separate line item for freight-in expenses does not necessarily apply only to additives and supplies. Commerce states petitioners intended the freight amount to be added to the price of each raw material factor of production. More importantly, Commerce found that at least some of the prices for other materials which petitioners claimed did not include

freight were, in fact, priced on a delivered basis, therefore, including freight. Thus, Commerce states that, in light of record evidence that some material prices already included freight and of the general accounting practice to include all freight-in costs, it would be unreasonable to add an additional amount for freight to petitioners' price for additives and supplies. *Commerce's Brief* at 6–8.

Certain of petitioners' submissions do not indicate whether all of the prices provided for raw materials excluded freight; certain others do include freight. *Remand Results* at 25–26. Considering that Commerce cannot know why petitioners had a separate line item for freight-in expenses in its submission and that Commerce has already re-examined this issue pursuant to this Court's remand and found some evidence that freight was included in additive and supply costs, the Court defers to Commerce and affirms its action on this issue.

6. *Indirect Material Costs:*

This Court instructed Commerce to reconsider the information submitted by petitioners regarding overhead costs, which includes both indirect materials and indirect labor costs, or to substantiate on the record why it should not, or to indicate in the record where these overhead costs were included. *Sigma Corp.*, 17 CIT at ____, 841 F. Supp. at 1272.

On remand, Commerce accounted for all the categories of overhead expense that were brought to its attention by the petitioners and used the methodology outlined in its analysis memorandum for the preliminary results of review. *Remand Results* at 16–18.

Domestic industry now asserts Commerce failed to account for complete indirect material costs in its overhead calculation. Domestic industry contends Commerce failed to rely on all indirect material cost information reported by petitioners and neglected to include costs for spare parts. Domestic industry requests a further remand so that Commerce can obtain additional information and, if none is forthcoming, to require Commerce to use best information available submitted by the petitioners. *Domestic Industry's Brief* at 13–15.

Commerce responds that it properly accounted for all indirect material costs in its overhead calculation pursuant to the Court's instructions. Commerce points out that the information submitted by the petitioners during the original proceeding established the category "additives and supplies," which represented a price for all materials other than pig iron, scrap iron, coke, bricks and aluminum. According to Commerce, the domestic industry is attempting to elude the consequences of its own data by asserting that it identified cost incurred for spare parts and including those costs under indirect material costs (as part of overhead). Commerce agrees that the figure for "additives and supplies" does not include spare parts, but asserts that spare parts are not indirect materials because they were not reported or demonstrated to be such and are not incorporated into the final product. *Commerce's Brief* at 8–11.

Commerce separated the components of its overhead expense calculation into the four standard accounting classifications and, on the basis of record evidence, concluded that its calculation of indirect materials, indirect labor, water, electricity and depreciation accounted for all of the categories of factory overhead expenses which either the petitioners or respondents were able to identify as occurring in the PRC during the review periods. Specifically, Commerce used petitioners' figures for additives and supplies to value indirect materials in the calculation of overhead expenses. *Remand Results* at 16–19.

Upon examination of the record, this Court finds that Commerce has reviewed the information on the record from respondents and petitioners and has ensured that its calculation of constructed value accounts for all indirect materials used in the production of iron castings. Commerce received information from respondents indicating that numerous additional materials were used in the production of castings, yet petitioners did not provide specific values for each material. Rather, they provided a figure which represented the cost of "additives and supplies," which Commerce used to value all other indirect materials enumerated by respondents. Also, respondents did not separately report spare parts and did not demonstrate that spare parts were incorporated into the final products. *Remand Results* at 27–30.

Accordingly, this Court hereby affirms Commerce's analysis and calculation of overhead expenses incurred by the respondents.

7. *Guangdong's Depreciation Expenses:*

In the final results, Commerce used petitioners' depreciation estimate as best information available. Upon review, however, this Court found the use of best information available as improper because respondents' submissions were adequate, listing all assets and equipment and their date of purchase and stating the appropriate rates of depreciation for assets in the foundry. Accordingly, this Court ordered Commerce to recalculate the depreciation expenses using the actual information supplied by respondents. *Sigma Corp.*, 17 CIT at ____, 841 F. Supp. at 1269–70.

On remand, Commerce complied with this Court's remand instructions and recalculated the factors of production. Commerce found that if the Chinese equipment were depreciated according to the public version of the depreciation schedule submitted in the case of iron construction castings from India, the equipment would have been written off before the earliest review period began and the total depreciation expense is, therefore, zero. *Remand Results* at 9–10.

Domestic industry maintains Commerce should not have relied only upon the information already on the record, but should have gathered additional information to calculate Guangdong's depreciation expenses. *Domestic Industry's Brief* at 15–18.

Commerce argues it properly adhered to the Court's instructions to calculate Guangdong's depreciation expenses based upon information already provided by Guangdong. *Commerce's Brief* at 12.

This Court agrees with Commerce's position. This Court deemed the respondents' submissions adequate to value depreciation expenses and specifically ordered Commerce to do so with the existing submissions. *Sigma Corp.*, 17 CIT at ____, 841 F. Supp. at 1269–70. The Court stated: "[T]he Court deems respondents' submissions as sufficient and, therefore, this case is remanded to Commerce to recalculate the depreciation expenses using the information supplied by respondents." *Id.* at ____, 841 F. Supp. at 1270.

Therefore, this Court affirms Commerce's action on this issue.

CONCLUSION

In accordance with the foregoing opinion, this Court, after due deliberation and a review of all papers in this action, hereby remands this case for Commerce to correct the error committed in calculating skilled labor costs of lathe operators, namely, for Commerce to multiply the machining time per metric ton by the production in metric tons of each foundry. In all other respects, Commerce acted in accordance with law and was supported by substantial evidence and this case is affirmed. Upon Commerce's correction of the error in skilled labor cost calculation as stated herein, this case is dismissed.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C95/49 6/1/95 Musgrave, J.	Zero One Network, Inc.	92–11–00749	8158.30.20008 4.9% 8517.82.00803 4.7%	8471.99.15 Free of duty	Agreed statement of facts	Los Angeles Local area network adapters

Index

Customs Bulletin and Decisions
Vol. 29, No. 25, June 21, 1995

U.S. Customs Service

Treasury Decisions

General Notices

CUSTOMS RULING LETTERS

U.S. Court of International Trade

Slip Opinions

Abstracted Decisions

U.S. G.P.O. 1995–387–567–00041